

# Exhibit A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

-----:  
AIMS INSTITUTE, PLLC, et al., :  
:  
Plaintiffs, :  
: Civil Action:  
vs. : 4:22-cv-02396  
:  
MERRICK GARLAND, et al., :  
:  
Defendants. :  
-----:

VIDEO-RECORDED DEPOSITION OF KELLEIGH MILLER

DATE: Thursday, January 5, 2023  
TIME: 9:37 a.m.  
LOCATION: United States Attorney's Office  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
  
REPORTED BY: Erick M. Thacker  
Reporter, Notary

Veritext Legal Solutions  
1250 Eye Street, NW, Suite 350  
Washington, D.C. 20005

<p>1 A P P E A R A N C E S</p> <p>2 On behalf of Plaintiffs:</p> <p>3 MATTHEW C. ZORN, ESQUIRE</p> <p>4 Yetter Coleman LLP</p> <p>5 811 Main Street</p> <p>6 Suite 4100</p> <p>7 Houston, Texas 77002</p> <p>8 mzorn@yettercoleman.com</p> <p>9 On behalf of Defendants:</p> <p>10 JIMMY ANTHONY RODRIGUEZ, ESQUIRE</p> <p>11 Assistant United States Attorney</p> <p>12 United States Department of Justice</p> <p>13 Southern District of Texas</p> <p>14 1000 Louisiana</p> <p>15 Suite 2300</p> <p>16 Houston, Virginia 77002</p> <p>17 jimmy.rodriguez2@usdoj.gov</p> <p>18 ALSO PRESENT:</p> <p>19 Glenn Gray, Esq., Agency Counsel</p> <p>20 Ellen Hebert, Video Technician</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 2</p>	<p>1 C O N T E N T S (Continued)</p> <p>2 E X H I B I T S</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4 Deposition-10B 22-00592-F Request Notes 190</p> <p>5 DEA000372 - 376</p> <p>6 Deposition-10C 22-00845-F Request Notes 207</p> <p>7 DEA000385</p> <p>8 Deposition-15 2021 Annual FOIA Report Raw 151</p> <p>9 Data for the Department of</p> <p>10 Justice</p> <p>11 Deposition-16 FY 2021 Report Raw Data 151</p> <p>12 (edited)</p> <p>13 Deposition-17 FY 2022 Raw Data 180</p> <p>14</p> <p>15 Deposition-FOIA 5 U.S. Code 552 30</p> <p>16</p> <p>17 Deposition-OLC FOIA Request from Matthew Zorn 44</p> <p>18 dated 1/5/2023</p> <p>19</p> <p>20</p> <p>21</p> <p>22 (*Exhibits attached to transcript.)</p> <p style="text-align: right;">Page 4</p>
<p>1 C O N T E N T S</p> <p>2 EXAMINATION BY: PAGE</p> <p>3 Counsel for Plaintiffs 7</p> <p>4 Counsel for Defendants 255</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 NUMBER DESCRIPTION PAGE</p> <p>8 Deposition-1 Letter dated 1/5/2022 Re: AIMS 13</p> <p>9 v. Garland, 22-cv-02396</p> <p>10 Deposition-2 Plaintiffs' 30(b)(6) Notice of 53</p> <p>11 Deposition of U.S. Department</p> <p>12 of Justice and U.S. Drug</p> <p>13 Enforcement Administration</p> <p>14</p> <p>15 Deposition-3 DEA Freedom of Information and 112</p> <p>16 Privacy Act Policy Number 0770</p> <p>17 Deposition-4 FSRN meeting agenda, DEA000097 226</p> <p>18 - 101</p> <p>19</p> <p>20 Deposition-6 Department of Justice Chief 239</p> <p>21 FOIA Officer Report 2022</p> <p>22 Deposition-7 Memorandum from the Attorney 250</p> <p>General dated 3/15/2022</p> <p>Deposition-8 Chief FOIA Officer Memo dated 46</p> <p>1/30/2019</p> <p>Deposition-9 Letter dated 8/17/2022 from 218</p> <p>America First Legal</p> <p>Deposition-10A 22-00585-F Request Notes 126</p> <p>DEA000370 - 371</p> <p style="text-align: right;">Page 3</p>	<p>1 P R O C E E D I N G S</p> <p>2 VIDEO TECHNICIAN: Good morning. We</p> <p>3 are going on the record at 9:37 a.m. Today is</p> <p>4 January 5th, 2023. Please note that the</p> <p>5 microphones are sensitive and may pick up</p> <p>6 whispering and private conversations. Please</p> <p>7 mute your phones at this time. Audio and video</p> <p>8 recording will continue to take place unless all</p> <p>9 parties agree to go off the record.</p> <p>10 This is Media Unit No. 1 of the</p> <p>11 video-recorded deposition of Kelleigh Miller,</p> <p>12 taken by counsel for the plaintiff in the matter</p> <p>13 of AIMS Institute, PLLC, et al. v. Merrick</p> <p>14 Garland, et al., filed in the United States</p> <p>15 District Court, Southern District of Texas,</p> <p>16 Houston Division, Civil Action No. 4:22-cv-02396.</p> <p>17 The location of the deposition is the</p> <p>18 United States Attorney's Office at 2100 Jamieson</p> <p>19 Avenue, Alexandria, Virginia 22314.</p> <p>20 My name is Ellen Hebert, representing</p> <p>21 Veritext. I am the videographer. The court</p> <p>22 reporter is Erick Thacker from Veritext.</p> <p style="text-align: right;">Page 5</p>

<p>1 If there are any objections to</p> <p>2 proceeding, please state them at the time of your</p> <p>3 appearance. Counsel and all present will now</p> <p>4 state their appearances and affiliations for the</p> <p>5 record, beginning with the noticing attorney.</p> <p>6 MR. ZORN: Matthew Zorn. I work at</p> <p>7 Yetter Coleman LLP. I represent plaintiffs, and</p> <p>8 I have no objections.</p> <p>9 THE WITNESS: Kelleigh Miller. I'm the</p> <p>10 chief FOIA officer for DEA.</p> <p>11 MR. RODRIGUEZ: Jimmy Rodriguez from</p> <p>12 the U.S. Attorney's Office in the Southern</p> <p>13 District of Texas. I'm here on behalf of the</p> <p>14 United States of America.</p> <p>15 MR. GRAY: Glenn Gray on behalf of DEA,</p> <p>16 agency counsel.</p> <p>17 VIDEO TECHNICIAN: Thank you. Will the</p> <p>18 court reporter please swear in the witness, and</p> <p>19 then counsel may proceed.</p> <p>20 WHEREUPON,</p> <p>21 KELLEIGH MILLER</p> <p>22 called as a witness, and having been first duly</p> <p style="text-align: right;">Page 6</p>	<p>1 A I do.</p> <p>2 Q And you are here today not in your</p> <p>3 personal capacity. Do you understand that?</p> <p>4 A Yes. Correct.</p> <p>5 Q You represent the United States</p> <p>6 Department of Justice. True?</p> <p>7 A Yes.</p> <p>8 Q And you are also here on behalf of the</p> <p>9 Drug Enforcement Administration --</p> <p>10 A Yes.</p> <p>11 Q -- correct?</p> <p>12 A Correct.</p> <p>13 Q Okay. And you don't represent them</p> <p>14 sort of in everything, but the notice topics in</p> <p>15 today's 30(b)(6) deposition. Is that fair?</p> <p>16 A Correct.</p> <p>17 Q And you've reviewed that notice, true?</p> <p>18 A I have.</p> <p>19 Q And you've prepared to testify on the</p> <p>20 topics in that notice?</p> <p>21 A Yes, I have.</p> <p>22 Q And I'll introduce the notice in a</p> <p style="text-align: right;">Page 8</p>
<p>1 sworn, was examined and testified as follows:</p> <p>2 EXAMINATION BY COUNSEL FOR PLAINTIFFS</p> <p>3 BY MR. ZORN</p> <p>4 Q Ms. Miller, good morning.</p> <p>5 A Good morning.</p> <p>6 Q How are you?</p> <p>7 A I'm doing well. Thank you.</p> <p>8 Q Thank you for preparing for and</p> <p>9 attending today's deposition.</p> <p>10 Have you been deposed before?</p> <p>11 A I have not.</p> <p>12 Q So I'm going to go over a few ground</p> <p>13 rules. Perhaps the most important is to give</p> <p>14 verbal answers to my questions.</p> <p>15 Do you understand?</p> <p>16 A Yes.</p> <p>17 Q If you don't understand anything in my</p> <p>18 question, please ask me. Do you understand?</p> <p>19 A I do.</p> <p>20 Q I would wait after my question for your</p> <p>21 counsel who may object to a question. So do you</p> <p>22 understand that?</p> <p style="text-align: right;">Page 7</p>	<p>1 moment. But we discussed that you've never been</p> <p>2 deposed before?</p> <p>3 A I have not.</p> <p>4 Q Okay. And did you prepare for today's</p> <p>5 deposition?</p> <p>6 A I did prepare.</p> <p>7 Q How did you prepare for today's</p> <p>8 deposition?</p> <p>9 A I reviewed the topics that we were</p> <p>10 going to discuss today and thought through my</p> <p>11 answers and then prepared accordingly for today.</p> <p>12 Q Have you reviewed the documents</p> <p>13 produced ahead of today's deposition?</p> <p>14 A I have.</p> <p>15 Q Did you prepare with anyone for today's</p> <p>16 deposition?</p> <p>17 A I did.</p> <p>18 Q And I don't want to know the content of</p> <p>19 those conversations, but who did you speak with?</p> <p>20 A I prepared with Mr. Rodriguez and</p> <p>21 Mr. Gray.</p> <p>22 Q Okay. And how long duration-wise did</p> <p style="text-align: right;">Page 9</p>

<p>1 you speak with Mr. Rodriguez?</p> <p>2 A I would say a couple of hours.</p> <p>3 Q Okay. How long did you speak with</p> <p>4 Mr. Gray?</p> <p>5 A The same. We were in conversation</p> <p>6 together.</p> <p>7 Q Okay. Was that an in-person</p> <p>8 conversation?</p> <p>9 A It was on partially virtual since</p> <p>10 Mr. Rodriguez is in Houston.</p> <p>11 Q And when was that conversation?</p> <p>12 A We had about three conversations over</p> <p>13 the course of, I believe, the last three weeks.</p> <p>14 Q Okay. If you need to take a break at</p> <p>15 any point in this deposition, please just let me</p> <p>16 know.</p> <p>17 A Will do.</p> <p>18 Q Even if I'm in a line of questioning, I</p> <p>19 think it's -- if you need a break, just take one.</p> <p>20 A Thank you.</p> <p>21 Q Is there any health reason or any other</p> <p>22 reason that you're aware of that would prevent</p> <p style="text-align: right;">Page 10</p>	<p>1 Q -- in the Southern District of Texas,</p> <p>2 right?</p> <p>3 A Yes.</p> <p>4 Q And there are two other plaintiffs, but</p> <p>5 Matthew Zorn is one of those three plaintiffs?</p> <p>6 A Yes.</p> <p>7 Q And I brought a pattern or practice</p> <p>8 claim, true?</p> <p>9 A Yes.</p> <p>10 Q I would say the -- well, one of the</p> <p>11 claims is that the Drug Enforcement</p> <p>12 Administration and the Department of Justice have</p> <p>13 an unlawful policy or practice of marking</p> <p>14 requests as raising unusual circumstances when</p> <p>15 they don't.</p> <p>16 That's -- that's my allegation, right?</p> <p>17 A Understood. Yes.</p> <p>18 Q And are you aware that I made an offer</p> <p>19 to the agency to settle this case?</p> <p>20 A I am aware.</p> <p>21 Q Okay. And I made that offer months</p> <p>22 ago, right?</p> <p style="text-align: right;">Page 12</p>
<p>1 you from testifying truthfully today on behalf</p> <p>2 of -- I'm going to say DOJ and DEA, and you</p> <p>3 understand what I mean, correct?</p> <p>4 A Yes, I do.</p> <p>5 Q Okay. So --</p> <p>6 A No -- no issue.</p> <p>7 Q Okay. So is there anything that you</p> <p>8 are aware of that would prevent you from</p> <p>9 testifying truthfully on behalf of DEA --</p> <p>10 A No.</p> <p>11 Q -- and DOJ? Okay.</p> <p>12 So -- and as -- as DOJ and DEA, do you</p> <p>13 have any understanding of why we are here today?</p> <p>14 A I do.</p> <p>15 Q Okay. Why are we here today?</p> <p>16 A We are here to discuss the pattern and</p> <p>17 practice lawsuit that you have filed against the</p> <p>18 Department and DEA.</p> <p>19 Q Yeah. So -- so I sued DEA, right?</p> <p>20 A (Nodding.) Yes.</p> <p>21 Q I sued DEA --</p> <p>22 A Sorry.</p> <p style="text-align: right;">Page 11</p>	<p>1 A To my knowledge, yes.</p> <p>2 Q And just so the record is clear, I made</p> <p>3 an offer to settle my case as Matthew Zorn.</p> <p>4 Are you aware of that?</p> <p>5 A I am aware of that, yes.</p> <p>6 Q And that offer was not accepted. True?</p> <p>7 A To my knowledge, it was not accepted.</p> <p>8 Q Is there was no counteroffer. Fair?</p> <p>9 A There was no counteroffer to my</p> <p>10 knowledge.</p> <p>11 Q So in some senses, part of the reason</p> <p>12 we're here is because the parties have not</p> <p>13 settled this case, right?</p> <p>14 A Correct.</p> <p>15 MR. ZORN: Okay. So I'm going to</p> <p>16 introduce as Exhibit 1, if you could pull this up</p> <p>17 on the computer.</p> <p>18 (Deposition Exhibit Number 1</p> <p>19 was marked for identification.)</p> <p>20 MR. RODRIGUEZ: And which folder should</p> <p>21 I be looking at here?</p> <p>22 MR. ZORN: This is a --</p> <p style="text-align: right;">Page 13</p>

<p>1 MR. RODRIGUEZ: The marked?</p> <p>2 MR. ZORN: This is a marked exhibit.</p> <p>3 MR. RODRIGUEZ: Okay.</p> <p>4 THE WITNESS: Okay.</p> <p>5 BY MR. ZORN</p> <p>6 Q And can you confirm for me that there</p> <p>7 is a document dated January 5th, 2022, in the top</p> <p>8 right?</p> <p>9 A Yes.</p> <p>10 Q And that's today's date, January 5th,</p> <p>11 2022?</p> <p>12 A That is not today's date.</p> <p>13 Q Sorry. It should be January 5th, 2023.</p> <p>14 That is a typo, but I will represent to you that</p> <p>15 this is my latest settlement offer --</p> <p>16 A Understood.</p> <p>17 Q -- Exhibit 1. It's something I wrote</p> <p>18 over the past couple days, and I'm introducing it</p> <p>19 now as Exhibit 1.</p> <p>20 And I was going to have you read the</p> <p>21 letter --</p> <p>22 A Okay.</p> <p style="text-align: right;">Page 14</p>	<p>1 A Correct.</p> <p>2 Q I'm going to continue.</p> <p>3 "Let me explain the second point."</p> <p>4 "In the fall, I made DEA and DOJ an</p> <p>5 offer to dispose of my case. Before the Court</p> <p>6 ordered a 30(b)(6) deposition and document</p> <p>7 production, I asked for an opportunity to speak</p> <p>8 with senior DEA/DOJ officials to raise certain</p> <p>9 policy matters/issues/concerns. In exchange, I</p> <p>10 offered to drop my case. My offer was contingent</p> <p>11 on nothing. I agreed to dismiss this suit no</p> <p>12 matter the outcome of those meetings. In</p> <p>13 response, I received no counteroffer and no</p> <p>14 response to my settlement offer. Just silence."</p> <p>15 Did I read those two paragraphs</p> <p>16 correctly?</p> <p>17 A Yes, you did read them correctly.</p> <p>18 Q Next paragraph. And I'll address the</p> <p>19 footnote at the end.</p> <p>20 Next paragraph: "Surely, my offer was</p> <p>21 not unreasonable. It was a sincere gesture I</p> <p>22 made in good faith to avoid wasting agency</p> <p style="text-align: right;">Page 16</p>
<p>1 Q -- but I think that's a little</p> <p>2 obnoxious, so I'm just going to read the letter.</p> <p>3 And just confirm that what I'm reading is correct</p> <p>4 on this document.</p> <p>5 And I'm just going to start with "Dear</p> <p>6 Administrator Milgram."</p> <p>7 "Dear Administrator Milgram, After</p> <p>8 reviewing DEA's recent December 2022 document</p> <p>9 production in this matter, two items are now</p> <p>10 clear to me."</p> <p>11 Bullet point 1: "First, despite</p> <p>12 patently unlawful FOIA policies and practices at</p> <p>13 issue in this case, it is evident that, overall,</p> <p>14 DEA's FOIA staff has worked diligently on my FOIA</p> <p>15 requests."</p> <p>16 Bullet point 2: "Second, the merits of</p> <p>17 my case remain strong; and in view of my earlier</p> <p>18 settlement offer, DEA's decision to litigate this</p> <p>19 matter continues to be an enormous waste of</p> <p>20 taxpayer money, agency resources, court</p> <p>21 resources, and my resources."</p> <p>22 Did I read up to that point correctly?</p> <p style="text-align: right;">Page 15</p>	<p>1 resources, including the time of Ms. Miller,</p> <p>2 Mr. Rodriguez, and the Court while furthering the</p> <p>3 interests of my client base. With increasing</p> <p>4 frequency, I appear before this agency and</p> <p>5 confront an outdated, unlawful, and often</p> <p>6 recalcitrant administrative process. In these</p> <p>7 endeavors, I represent groups with serious</p> <p>8 grievances but without deep pockets that have to</p> <p>9 negotiate with this administrative state:</p> <p>10 Researchers, veterans, terminally-ill patients,</p> <p>11 start-ups, and so on. I've taken most of these</p> <p>12 representations pro bono; many simply want to</p> <p>13 legally research or access controlled substances</p> <p>14 to save lives. None of them are drug pushers or</p> <p>15 culpable actors in the opioid epidemic, for</p> <p>16 example. In fact, some are trying to address</p> <p>17 substance abuse issues. And in many cases, I</p> <p>18 believe the issues could be better addressed with</p> <p>19 fewer lawyers, less adversariness, and improved</p> <p>20 communication and dialogue from this agency."</p> <p>21 Did I read to that point correctly?</p> <p>22 A Correct. You did.</p> <p style="text-align: right;">Page 17</p>

<p>1 Q Next paragraph: Thus, it is also my 2 belief that these communities should be heard 3 directly by the decisionmakers of this agency, 4 unfiltered by federal bureaucracy and convoluted 5 administrative processes. If I can deliver for 6 that -- sorry. Let me start that sentence over. 7 "If I can deliver that for them here, I 8 will be satisfied. But if not, I will continue 9 to use processes provided by law and litigate 10 cases when the agency disregards the rules to the 11 detriment of my clients, the public interest, and 12 public safety. 13 Did I read that paragraph correctly? 14 A You did. 15 Q Thanks. 16 "After reviewing DEA's production, I 17 believe the merits of my case to be stronger than 18 ever. Nonetheless, I hold out hope that the 19 agency will agree to a more productive and 20 cost-efficient resolution to my grievances. The 21 agency's initial reception of my unorthodox yet 22 highly efficient settlement offer appears to be</p> <p style="text-align: right;">Page 18</p>	<p>1 non-disclosure request to be proper. This case 2 presents at least two matters of public interest, 3 and multiple mainstream news organizations have 4 expressed some interest in the FOIA issues. From 5 a legal standpoint, the non-disclosure request 6 has no merit. Not only is there no Rule 11 basis 7 for either party to file material related to DOJ 8 and DEA's implementation of FOIA under seal, but 9 there is no justification for a federal agency to 10 conceal processes it uses to instruct its staff 11 on how to process FOIA requests. The notion is 12 antithetical to FOIA itself and the principles 13 laid down in the Garland Memo." 14 Did I read that correctly? 15 A You did. 16 Q I'll read the last sentence in a 17 moment, but let's just quickly go in the 18 footnote, so I can get this in the record. 19 A Okay. 20 Q This is footnote 1 back on the page. 21 "As of December 2022, I also represent 22 former DEA Special Agent Anthony Armour of DEA's</p> <p style="text-align: right;">Page 20</p>
<p>1 microcosmic of the problems I'm dealing with -- a 2 reflexive, institutional resistance to the notion 3 that quite possibly, a different way of doing 4 things might deliver better results." 5 Did I read that correctly? 6 A You did. 7 Q Next paragraph: My settlement offer 8 today remains substantially the same as it was 9 months ago: a meeting with the Administrator so 10 that some of these less endowed constituencies 11 can present and be heard directly by leadership, 12 unfiltered. And since I've now put in 13 considerably more time and energy into this case 14 than I did when I made my first settlement offer, 15 that settlement offer -- sorry -- that settlement 16 must also include reimbursing some small measure 17 of the time I've spent litigating this case. 18 Did I read that correctly? 19 A You did. 20 Q "Finally, while I understand the 21 agency's interest in keeping information elicited 22 in this case confidential, I do not believe its</p> <p style="text-align: right;">Page 19</p>	<p>1 Tactical Diversion Squad. DEA fired SA Armour 2 for using what everyone agrees was publicly held 3 out to be a CBD-oil product as many in this 4 country do, Armour used the product to treat his 5 back pain and to avoid use of more severe pain 6 killers such as opioids. Unfortunately, the 7 product he used tested at .35 percent THC -- a 8 sliver above the .30 legal threshold -- but with 9 a margin and error of plus and minus .08. Nobody 10 disputes SA Armour believed he was taking a 11 product within the legal limits and that only 12 immediately after his positive drug test did DEA 13 issue warnings and subsequent remedial guidance 14 documents to employees on the dangers of using 15 CBD products which could test high. Under these 16 circumstances, why DEA middle management deemed 17 it necessary to discharge an employee working in 18 tactical diversion in good standing -- and who 19 unintentionally used a hot CBD product instead of 20 opioids -- is beyond mystifying. It is a case I 21 look forward to presenting." 22 Did I read that correctly?</p> <p style="text-align: right;">Page 21</p>



<p>1 A You did.</p> <p>2 Q Now let me just read the last sentence</p> <p>3 of the letter.</p> <p>4 "I urge the agency to reconsider my</p> <p>5 good faith offer."</p> <p>6 Did I read that correctly?</p> <p>7 A You did.</p> <p>8 Q And I would here at this deposition</p> <p>9 urge the agency to reconsider my offer.</p> <p>10 But since we're here and it's a</p> <p>11 deposition, I need to ask you questions and you</p> <p>12 need to give me answers, so --</p> <p>13 MR. RODRIGUEZ: Can I ask for</p> <p>14 clarification on your letter?</p> <p>15 MR. ZORN: Yes.</p> <p>16 MR. RODRIGUEZ: When you state that you</p> <p>17 will dismiss the case, to be clear, you're</p> <p>18 talking about dismissing your claims, or are you</p> <p>19 now authorized to offer a dismissal of the entire</p> <p>20 action?</p> <p>21 MR. ZORN: I can certainly talk to the</p> <p>22 other -- I can talk to the other parties in the</p> <p style="text-align: right;">Page 22</p>	<p>1 A I did.</p> <p>2 Q And when did you become the chief FOIA</p> <p>3 officer for DEA?</p> <p>4 A In March of 2017.</p> <p>5 Q Okay. And there was a reorganization</p> <p>6 of the FOIA division at DEA at one point,</p> <p>7 correct?</p> <p>8 A Correct.</p> <p>9 Q That was in 2021, correct?</p> <p>10 A 2020.</p> <p>11 Q 2020?</p> <p>12 A Yes.</p> <p>13 Q When was it completed?</p> <p>14 A So I initiated a request during 2019 to</p> <p>15 completely restructure the FOIA unit, and it took</p> <p>16 effect October 1 of 2020.</p> <p>17 Q Why did you do that?</p> <p>18 A I did this because I had recognized</p> <p>19 shortly after my arrival in this position that we</p> <p>20 were just not structured to be successful, and I</p> <p>21 wanted to create specific units to handle certain</p> <p>22 types of requests and really better divide the</p> <p style="text-align: right;">Page 24</p>
<p>1 case. I'm only, I guess, prepared and authorized</p> <p>2 at this exact moment to dismiss my case.</p> <p>3 MR. RODRIGUEZ: Okay.</p> <p>4 MR. ZORN: But I can certainly, during</p> <p>5 a break, if that's -- if this is a serious</p> <p>6 entertaining of my offer, then we can certainly</p> <p>7 look into that.</p> <p>8 MR. RODRIGUEZ: And then the other</p> <p>9 point of clarification, when we initially</p> <p>10 spoke -- we can go off the record if you -- if</p> <p>11 you --</p> <p>12 MR. ZORN: Yeah. Can we go off the</p> <p>13 record?</p> <p>14 VIDEO TECHNICIAN: Going off the</p> <p>15 record, the time is 9:53 a.m.</p> <p>16 (Recess 9:53 a.m. to 9:56 a.m.)</p> <p>17 VIDEO TECHNICIAN: Going back on the</p> <p>18 record, the time is 9:56 a.m.</p> <p>19 BY MR. ZORN</p> <p>20 Q Ms. Miller, you -- you introduced</p> <p>21 yourself today as DEA's chief FOIA officer,</p> <p>22 didn't you?</p> <p style="text-align: right;">Page 23</p>	<p>1 overall labor of work in the office.</p> <p>2 Q And so how is the DEA FOIA office</p> <p>3 structured today?</p> <p>4 A So we have three specific subunits, we</p> <p>5 call them, one being the intake unit -- subunit,</p> <p>6 the second being the processing subunit, and the</p> <p>7 third is legal and external affairs subunit.</p> <p>8 Q Okay. And how many people work in the</p> <p>9 intake unit?</p> <p>10 A So I have a lot of staff vacancies</p> <p>11 right now. So right now, we have four -- excuse</p> <p>12 me -- five staff members assigned to the intake</p> <p>13 unit.</p> <p>14 Q Okay. Is -- I don't know -- is</p> <p>15 Mr. Polk one in the intake unit?</p> <p>16 A He is, but he just left DEA.</p> <p>17 Q He just left DEA. Well, but he was --</p> <p>18 A He was --</p> <p>19 Q -- in the intake unit?</p> <p>20 And then the processing unit, how many</p> <p>21 folks work --</p> <p>22 A I have --</p> <p style="text-align: right;">Page 25</p>



<p>1 Q -- in the processing unit?</p> <p>2 A -- four government information</p> <p>3 specialists assigned to that team right now and a</p> <p>4 GS-14 unit chief that supervises.</p> <p>5 Q And what is a government information</p> <p>6 specialist?</p> <p>7 A So these are -- these are employees</p> <p>8 that process FOIA cases. So government</p> <p>9 information specialist is the title of the</p> <p>10 majority of the folks in our office.</p> <p>11 Q Okay. And then legal and external, how</p> <p>12 many folks work in legal and external?</p> <p>13 A I have two government information</p> <p>14 specialists assigned to that team right now, and</p> <p>15 I have one GS-14 unit chief running that unit.</p> <p>16 Q And her name is Angela Hertel, right?</p> <p>17 A Correct.</p> <p>18 Q And she's been working there for, I</p> <p>19 guess, a few years, right?</p> <p>20 A Over -- she's been part of our FOIA</p> <p>21 office for a little over ten years, I believe.</p> <p>22 Q Interestingly, she's usually the</p> <p style="text-align: right;">Page 26</p>	<p>1 is part of the DOJ chief -- could you just --</p> <p>2 A Sure.</p> <p>3 Q -- explain that to me --</p> <p>4 A I can clarify.</p> <p>5 Q -- a little bit.</p> <p>6 A We are --</p> <p>7 Q Yeah.</p> <p>8 A -- part of the DEA's Office of Chief</p> <p>9 Counsel.</p> <p>10 Q Okay. So you guys are part of the</p> <p>11 Office of Chief Counsel, but you report to</p> <p>12 Ms. DuBois, who is at DOJ --</p> <p>13 A DEA.</p> <p>14 Q Oh, at --</p> <p>15 A Yes.</p> <p>16 Q -- DEA.</p> <p>17 THE REPORTER: You-all are starting to</p> <p>18 speak over each other. If you could --</p> <p>19 THE WITNESS: Sorry.</p> <p>20 THE REPORTER: -- just wait for the --</p> <p>21 THE WITNESS: Sorry.</p> <p>22 THE REPORTER: -- end of the question.</p> <p style="text-align: right;">Page 28</p>
<p>1 witness that the agency puts up in a FOIA case.</p> <p>2 This is a privilege for me to be able to have the</p> <p>3 chief.</p> <p>4 So -- and so this is -- these are the</p> <p>5 three units, and then you supervise these three</p> <p>6 units, correct?</p> <p>7 A Correct.</p> <p>8 Q And who do you report to?</p> <p>9 A So I report to the section chief of the</p> <p>10 FOIA and information law section at DEA.</p> <p>11 Q Okay. And who is that?</p> <p>12 A That is Brooke DuBois.</p> <p>13 Q Okay. And is that -- is that in a</p> <p>14 different DOJ component?</p> <p>15 A No. So we are part of the Office of</p> <p>16 Chief Counsel, and so the FOIA and information</p> <p>17 law section is one of the many sections within</p> <p>18 the Office of Chief Counsel that we report up to.</p> <p>19 Q So -- so when you say "we" and --</p> <p>20 because you're here representing DOJ and -- and</p> <p>21 DEA, so I just want the record to be clear.</p> <p>22 Are you saying that the DEA FOIA office</p> <p style="text-align: right;">Page 27</p>	<p>1 BY MR. ZORN</p> <p>2 Q Okay. So -- so you report to</p> <p>3 Ms. DuBois, who's in the DEA's chief counsel</p> <p>4 office?</p> <p>5 A Correct.</p> <p>6 Q And then Ms. DuBois reports to?</p> <p>7 A Sandra Stevens, who is the deputy chief</p> <p>8 of the Office of Chief Counsel at DEA.</p> <p>9 Q Okay. And Ms. Stevens reports to?</p> <p>10 A Hallie Hoffman, who is the chief</p> <p>11 counsel for DEA.</p> <p>12 Q And I will assume that Ms. Hoffman</p> <p>13 reports to the administrator, correct?</p> <p>14 A Correct.</p> <p>15 Q What are your responsibilities as the</p> <p>16 chief FOIA officer for DEA?</p> <p>17 A So my responsibilities are to oversee</p> <p>18 the overall administration of the FOIA and the</p> <p>19 Privacy Act at DEA.</p> <p>20 Q Okay. And -- and the responsibilities</p> <p>21 that you have are in the FOIA statute, right?</p> <p>22 A Correct.</p> <p style="text-align: right;">Page 29</p>

<p>1 MR. ZORN: And why don't we pull that 2 up. So I'm going to introduce -- I'm going to 3 get creative. I'm going to call this Exhibit 4 FOIA. Let's see. 5 All right. I have introduced into the 6 folder Exhibit capital F-O-I-A. 7 (Deposition Exhibit FOIA 8 was marked for identification.) 9 MR. RODRIGUEZ: Sorry. 10 THE WITNESS: That's okay. 11 BY MR. ZORN 12 Q And can we turn to -- it's page 25 of 13 the document. You can see at the bottom right -- 14 well, first, can you confirm for me at least as 15 for the first page that this is 5 U.S. Code 16 section 552? 17 A It is. 18 Q And that's -- that's the FOIA -- 19 A Correct. 20 Q -- citation? 21 A Yes. 22 Q And this is from -- I think I got it</p> <p style="text-align: right;">Page 30</p>	<p>1 MR. ZORN: Sure. 2 MR. RODRIGUEZ: -- here. 3 MR. ZORN: Sure. 4 MR. RODRIGUEZ: Sorry about that. 5 Yeah, we're good now. 6 BY MR. ZORN 7 Q Okay. So the chief -- I'm going to 8 read it again. 9 "The Chief FOIA Officer of each agency 10 shall, subject to the authority of the head of 11 the agency." 12 Did I read (j)(2) correctly? 13 A You did. 14 Q And the chief FOIA officer of DEA is 15 you, Ms. Kelleigh Miller, correct? 16 A Correct. 17 Q And we can agree that the Drug 18 Enforcement Administration is an agency, correct? 19 A It is. 20 Q So in (j)(2), the chief FOIA officer of 21 DEA is you? 22 A Correct.</p> <p style="text-align: right;">Page 32</p>
<p>1 from the Cornell U.S. law U.S. code. 2 Have you ever been to that -- 3 A I have been to this. Typically, when I 4 want to look up 552, I will go to the 5 electronic -- or I'm sorry -- the -- I'll just go 6 to the United States code website to get it. 7 Q But it's a statute that -- that DOJ and 8 DEA is -- is familiar with? 9 A Correct. 10 Q Okay. So if you can scroll to page 25, 11 and I want to look at -- on page 25, I want to 12 look at (j)(2). And just tell me when you're 13 there. 14 So it says, "The Chief FOIA Officer of 15 each agency shall, subject to the authority of 16 the head of the agency." 17 I want to stop there. So the chief 18 FOIA officer is -- 19 MR. RODRIGUEZ: Could you hold on? 20 MR. ZORN: Yes. 21 MR. RODRIGUEZ: Let me -- let us get to 22 the page --</p> <p style="text-align: right;">Page 31</p>	<p>1 Q Okay. And A is "have agency-wide 2 responsibility for efficient and appropriate 3 compliance with this section." 4 As the chief FOIA officer, that is one 5 of your responsibilities, correct? 6 A Correct. 7 Q That's statutory? 8 A Correct. 9 Q B, "monitor implementation of this 10 section throughout the agency and keep the head 11 of the agency, the chief legal officer of the 12 agency, and the Attorney General appropriately 13 informed of the agency's performance in 14 implementing this section." 15 That's one of your responsibilities, 16 correct? 17 A It is. 18 Q And that's because you are the chief 19 FOIA officer of DEA? 20 A Correct. 21 Q Okay. C, "recommend to the head of the 22 agency such" -- and I'll just pause there. That</p> <p style="text-align: right;">Page 33</p>

<p>1 in this case is -- is the Honorable Anne Milgram, 2 correct? 3 A Correct. 4 Q "Such adjustments to agency practices, 5 policies, personnel, and funding as may be 6 necessary to improve its implementation of the 7 section." 8 That's something you do, right? 9 A Correct. 10 Q And is it something you do through this 11 chain of command, or do you -- do you actually 12 get to speak to Ms. Milgram? 13 A No. This is done through my chain of 14 command. 15 Q Okay. So you don't get to speak to 16 Ms. Milgram, like -- because I'm having trouble 17 with that, too -- 18 A Generally, no. 19 Q -- I would say. Okay. 20 So -- so let's do D. 21 "Review and report to the Attorney 22 General, through the head of the agency, at such</p> <p style="text-align: right;">Page 34</p>	<p>1 officer, her name is Vanita Gupta, right? 2 A I am forgetting, because I actually 3 deal primarily with Bobby Talebian, who is the 4 chief of the Office of Information Policy, but I 5 forget the name of the DOJ's chief FOIA officer. 6 I don't have any interaction with that 7 individual. 8 Q Okay. So you don't interact with the 9 chief FOIA officer of the Department of Justice, 10 and you, meaning Kelleigh Miller, the chief FOIA 11 officer of DEA, doesn't interact with the chief 12 FOIA officer of DOJ, assuming it is Vanita Gupta? 13 A I do not. 14 Q Okay. You -- you, as in Kelleigh Ms. 15 Miller, does interact with a gentleman named 16 Bobby Talebian, correct? 17 A Bobby Talebian, but primarily his 18 staff. That's the Office of Information Policy. 19 This is essentially the FOIA office for DOJ. We 20 have a lot of interaction with that office, yes. 21 Q Okay. And what -- what types of 22 matters do you discuss with the DOJ?</p> <p style="text-align: right;">Page 36</p>
<p>1 times and in which formats as the Attorney 2 General may direct, on the agency's performance 3 in implementing this section." 4 And so I'll just make this open-ended. 5 That's something you do, true? 6 A We do that. 7 Q And how does the agency do that? 8 A We accomplish this through our annual 9 reporting through the -- the -- I'm sorry -- the 10 annual FOIA reports and the chief FOIA officer 11 report that we complete every year and we send 12 through our chain of command to the Department of 13 Justice. And then they prepare the DOJ chief 14 office -- chief officer reports and annual FOIA 15 reports that gets submitted to the attorney 16 general. 17 Q And the DOJ chief FOIA officer 18 is Associate Attorney General Vanita Gupta, 19 right? 20 A Could you ask the question again? I'm 21 sorry. 22 Q The DE- -- the DOJ's chief FOIA</p> <p style="text-align: right;">Page 35</p>	<p>1 A Sure. So the Office of Information 2 Policy, otherwise known as OIP, handles all of 3 the administrative appeals. So any time a 4 requester is unsatisfied with our determination 5 to their FOIA request, they have the right to 6 file an administrative appeal. 7 The department will come back to us and 8 ask us for all the background materials on the 9 request. They may have some questions for us. 10 So we -- we deal with them heavily on the 11 administrative appeal process. 12 We also participate in trainings that 13 OIP conducts throughout the year. We attend 14 various meetings that OIP hosts and things like 15 that. 16 Q Have you attended the Chief FOIA 17 Officers Council? 18 A I have, yes. 19 Q Okay. And that's run by 20 Mr. Talebian -- 21 A It is -- 22 Q -- true?</p> <p style="text-align: right;">Page 37</p>

<p>1 A -- I believe, yes.</p> <p>2 Q I've learned more about FOIA than I</p> <p>3 ever wanted to know.</p> <p>4 So let's just continue here.</p> <p>5 So, E, "facilitate public understanding</p> <p>6 of the purposes of the statutory exemptions of</p> <p>7 this section by including concise descriptions of</p> <p>8 the exemptions in both the agency's handbook</p> <p>9 issued under subsection (g) and the agency's</p> <p>10 annual report on this section, and by providing</p> <p>11 an overview, where appropriate, of certain</p> <p>12 general categories of agency records to which</p> <p>13 those exemptions apply."</p> <p>14 Did I read that correctly?</p> <p>15 A You did.</p> <p>16 Q Okay. And that's -- that's your</p> <p>17 responsibility as the chief FOIA officer of DEA,</p> <p>18 true?</p> <p>19 A It is.</p> <p>20 Q Okay. And, F, "offer training to</p> <p>21 agency staff regarding their responsibilities."</p> <p>22 And you, as the chief FOIA officer,</p> <p style="text-align: right;">Page 38</p>	<p>1 Q And who is that?</p> <p>2 A That is Desheila Wallace.</p> <p>3 Q Okay. Are you a senior official at</p> <p>4 DEA?</p> <p>5 A I would -- well, I'm -- I mean, I'm a</p> <p>6 section chief, so I would consider it to be a</p> <p>7 senior manager.</p> <p>8 Q Would you consider yourself to be a</p> <p>9 senior official at the -- well, let me say: Does</p> <p>10 DEA and -- and/or DOJ consider you to be a senior</p> <p>11 official?</p> <p>12 A I believe so.</p> <p>13 Q Okay. Why?</p> <p>14 A I think because of my role as the --</p> <p>15 the chief FOIA officer for DEA, because of my</p> <p>16 grade level in the government, and my</p> <p>17 responsibilities.</p> <p>18 Q Okay. Are you a political appointee?</p> <p>19 A I am not.</p> <p>20 Q Were you -- are you at the assistant</p> <p>21 secretary or equivalent level?</p> <p>22 A I am not.</p> <p style="text-align: right;">Page 40</p>
<p>1 offer training?</p> <p>2 A We do.</p> <p>3 Q Okay. And I cut off the last three</p> <p>4 words of that. I just want the record to be</p> <p>5 clear. It says "under this section." I</p> <p>6 didn't -- I didn't put that in.</p> <p>7 So, G, "serve as the primary agency</p> <p>8 liaison with the Office of Government Information</p> <p>9 Services and the Office of Information Policy."</p> <p>10 Did I read that correctly?</p> <p>11 A You did.</p> <p>12 Q And when we were talking about OIP,</p> <p>13 that's the Office of Information Policy, correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. And then the final point of this</p> <p>16 (j)(2) is H, "designate 1 or more FOIA public</p> <p>17 liaisons."</p> <p>18 Did I read that correctly?</p> <p>19 A You did.</p> <p>20 Q And the DEA has a FOIA public liaison,</p> <p>21 correct?</p> <p>22 A We do.</p> <p style="text-align: right;">Page 39</p>	<p>1 Q Okay. Who at DEA is at the assistant</p> <p>2 secretary or equivalent level?</p> <p>3 A I would consider that to be our SES</p> <p>4 personnel.</p> <p>5 Q Okay.</p> <p>6 A Senior executives.</p> <p>7 Q And who are those?</p> <p>8 A Those are generally the individuals</p> <p>9 that run the divisions at DEA.</p> <p>10 Q Okay. And can you -- can you name them</p> <p>11 for me?</p> <p>12 A I mean, I can give you titles probably</p> <p>13 better. Like the chief of the intelligence</p> <p>14 division, the chief of operations, the chief</p> <p>15 counsel.</p> <p>16 Q Okay.</p> <p>17 A Our special agents in charge in the</p> <p>18 field, perhaps.</p> <p>19 Q So did it ever occur to you that you're</p> <p>20 being underpaid?</p> <p>21 A No.</p> <p>22 Q Can we look at (j)(1)? It's right</p> <p style="text-align: right;">Page 41</p>

<p>1 above (j)(2).  2 Can you read (j)(1)?  3 A Would you like me to read (j)(1)?  4 Q Yes. Yes, please.  5 A "Each agency shall designate a Chief  6 FOIA Officer who shall be a senior official of  7 each agency (at the Assistant Secretary or  8 equivalent level)."  9 Q You're the chief FOIA officer of DEA,  10 true?  11 A Correct.  12 Q You are not at the assistant secretary  13 or equivalent level, are you?  14 A I am --  15 MR. RODRIGUEZ: Objection. Calls for  16 legal conclusion.  17 You can still answer.  18 THE WITNESS: I am not.  19 BY MR. ZORN  20 Q Okay. So let's -- let's assume -- with  21 your counsel's objection, let's assume you're  22 correct. Then DEA currently has a chief FOIA</p> <p style="text-align: right;">Page 42</p>	<p>1 And it's a little bit beyond the scope  2 of the -- the topics, so if -- I'm not going to  3 suggest that you're unprepared, but just for  4 foundation, do you know what the Office of Legal  5 Counsel at the Department of Justice is?  6 A Maybe I do not.  7 Q Okay. So do you know what an OLC  8 opinion is?  9 A No.  10 Q Okay. Well -- so you don't know about  11 an OLC opinion by a person named Paul Colborn?  12 A I am not familiar with that, no.  13 Q Okay. Well, I'm going to do something  14 very unorthodox.  15 You represent -- you're here today on  16 behalf of the Department of Justice, correct?  17 A Yes.  18 Q Okay. And I'm going to give you a FOIA  19 request here for that OLC opinion.  20 (Deposition Exhibit OLC  21 was marked for identification.)  22 MR. RODRIGUEZ: I object to the extent</p> <p style="text-align: right;">Page 44</p>
<p>1 officer that is contrary to what this says, true,  2 under the assumption that your prior answer is  3 correct, that you are not the assistant secretary  4 or equivalent level?  5 A True.  6 Q Okay. And, in fact, there's an Office  7 of Legal Counsel opinion on this.  8 Have you ever read it?  9 A I have not.  10 Q Well, the Department of Justice has  11 read it, right?  12 A I am unsure.  13 Q Because the office of -- do you know  14 what the Office of Legal Counsel is?  15 A Yes.  16 Q Okay. So what is the Office of Legal  17 Counsel?  18 A Meaning the Office of Legal Counsel at  19 DOJ or -- or DEA? Maybe I misunderstood. I'm  20 sorry.  21 Q The DOJ Office of Legal Counsel, are  22 you familiar with that?</p> <p style="text-align: right;">Page 43</p>	<p>1 that she's here to provide testimony on the  2 topics that you've designated. She's not here as  3 a representative of the Department of Justice at  4 large.  5 MR. ZORN: Fair enough. I'm going  6 to -- I'm going to -- I'll submit -- after the  7 deposition, I'll submit it normally.  8 BY MR. ZORN  9 Q But -- but could you just read my  10 request out there?  11 A "I hereby request the OLC document  12 containing the opinion/agency conclusion about 5  13 USC 552(j)(2)," signed Matthew Zorn.  14 Q Oh, sorry. It should be (j)(1). Let  15 me -- let me --  16 A Okay.  17 Q -- correct this exhibit. Okay. I'm  18 not going to make you reread this.  19 A Okay.  20 MR. ZORN: Okay. So -- but let's --  21 let's move to a different exhibit. I'm going to  22 introduce Exhibit 8.</p> <p style="text-align: right;">Page 45</p>

<p>1 (Deposition Exhibit Number 8 2 was marked for identification.) 3 MR. RODRIGUEZ: I'm going to lodge an 4 objection to the serving of the FOIA request. 5 Judge Hughes has authorized this deposition on 6 the specific topics that were identified. He's 7 not authorized this deposition for the purpose of 8 serving FOIA requests on the 30(b)(6) designee. 9 Our position is that this is an attempt 10 to harass this witness and to avert the proper 11 purpose of this deposition, and we reserve our 12 right to file a motion for protective order and 13 stop the deposition and to contact Judge Hughes 14 or Magistrate Bray and describe what has occurred 15 up to this point. 16 MR. ZORN: Okay. Understood. I -- one 17 of the notice topics was the structure and 18 operation of DEA's FOIA office, and I've been 19 asking questions about whether Ms. Miller is the 20 chief of the DEA. And -- and, obviously, she 21 holds herself out to be, and she performs the 22 functions and the duties of the office, but there</p> <p style="text-align: right;">Page 46</p>	<p>1 There's no purpose according to this topics for 2 what Judge Hughes has authorized for you to do 3 something like that. 4 MR. ZORN: Ms. Miller, do you feel -- 5 MR. RODRIGUEZ: And if that's an 6 indication of where we're going today, then I'm 7 more than happy to talk to Judge Hughes about 8 this. 9 BY MR. ZORN 10 Q Ms. Miller, do you feel harassed at 11 this point? 12 A I would say I think that the questions 13 that I'm being asked are not the things that I 14 prepared for for today. 15 Q Okay. If you feel uncomfortable, 16 please just let me know. It's not my aim to 17 harass you. You're here as a representative of 18 the Department of Justice, Drug Enforcement 19 Administration. I'm here to learn a little bit 20 about the implementation of FOIA, and if you feel 21 like I'm veering, please let me know. 22 That is not -- my goal here is not to</p> <p style="text-align: right;">Page 48</p>
<p>1 does seem to be a conflict with what the statute 2 says. And so I think it is proper for me to 3 inquire what it is the Department of Justice 4 thinks about whether she is lawfully serving in 5 that office, which obviously relates to the 6 policies and practices at issue in the case. 7 I will say I'm done with the OLC. 8 We're -- that's behind me. I'm putting -- 9 MR. RODRIGUEZ: Yeah. 10 MR. ZORN: -- a different document -- 11 MR. RODRIGUEZ: No, what -- what topic 12 that you've identified authorizes you to serve a 13 FOIA request during the deposition on this 14 witness? 15 MR. ZORN: Well, I don't think it's 16 effective, so I'm going to actually submit it to 17 OLC and ask for the OLC opinion from OLC. It's 18 not really proper for me to give it to DEA -- 19 MR. RODRIGUEZ: Correct. 20 MR. ZORN: -- but -- 21 MR. RODRIGUEZ: And it was done, from 22 my perspective, as a form to harass this witness.</p> <p style="text-align: right;">Page 47</p>	<p>1 make you uncomfortable, and, understandably, 2 there might be certain things that you just -- 3 you just don't know, and we can deal with that 4 later. But that's not my objective here today. 5 Do you understand that? 6 A Understood. 7 MR. ZORN: Jimmy -- 8 MR. RODRIGUEZ: And if -- 9 MR. ZORN: -- if you think I'm -- 10 MR. RODRIGUEZ: -- you -- if you 11 believe that she's not properly appointed under 12 the statute, I mean, that's a legal question. 13 I'm fine with you asking what is her position, 14 what's her grade level. 15 And if your legal position is she does 16 not qualify for this position under the statute, 17 then of course you can raise that with the Court. 18 But to argue with the witness about whether she 19 is or is not an assistant secretary or equivalent 20 level, it, in my view, serves no discovery 21 purpose in this lawsuit. 22</p> <p style="text-align: right;">Page 49</p>



<p>1 BY MR. ZORN</p> <p>2 Q Ms. Miller, do you feel like I'm</p> <p>3 arguing with you?</p> <p>4 A I do not.</p> <p>5 Q Okay. So, again, if you feel like I'm</p> <p>6 arguing with you, let me know. That is -- again,</p> <p>7 is also not the purpose of this deposition. I'm</p> <p>8 here just to learn information about what are the</p> <p>9 contentions and, frankly, the facts of DEA and</p> <p>10 DOJ -- part of this deposition is about the</p> <p>11 contentions, legal contentions, as far as unusual</p> <p>12 circumstances, but, understandably, this is a</p> <p>13 little bit different from that. But I am here</p> <p>14 to -- to discover a little bit about contentions.</p> <p>15 But again, Ms. Miller, if you feel like</p> <p>16 I'm arguing with you, that's not productive, and</p> <p>17 let's not do that, and just let me know.</p> <p>18 Is that all right?</p> <p>19 A Understood.</p> <p>20 Q Okay. So I'd like to pull up Exhibit</p> <p>21 8, though. And when you have that up, if you</p> <p>22 could just let me know.</p> <p style="text-align: right;">Page 50</p>	<p>1 of a 30(b)(6) deponent, "will require agencies to</p> <p>2 report whether their designations meet this</p> <p>3 statutory requirement in their 2019 Chief FOIA</p> <p>4 Officer Reports."</p> <p>5 Did I read that correctly?</p> <p>6 A You did.</p> <p>7 Q Did DEA report whether it met the</p> <p>8 statutory requirement?</p> <p>9 A I do not specifically remember that.</p> <p>10 MR. ZORN: Okay. Do you want to take a</p> <p>11 break? I mean, we've been going --</p> <p>12 MR. RODRIGUEZ: Yeah.</p> <p>13 THE WITNESS: Whatever you want --</p> <p>14 MR. RODRIGUEZ: That's fine.</p> <p>15 THE WITNESS: -- to do.</p> <p>16 MR. ZORN: Okay.</p> <p>17 VIDEO TECHNICIAN: Going off the</p> <p>18 record, the time is 10:24 a.m.</p> <p>19 (Recess 10:24 a.m. to 10:47 a.m.)</p> <p>20 VIDEO TECHNICIAN: Going back on the</p> <p>21 record, the time is 10:47 a.m.</p> <p>22</p> <p style="text-align: right;">Page 52</p>
<p>1 And -- and so I'm not going to read the</p> <p>2 entire document. I'll give you a chance to just</p> <p>3 read it and just let me know when you've read the</p> <p>4 document.</p> <p>5 A I have read the document.</p> <p>6 Q Okay. So -- and you started serving as</p> <p>7 the DEA's chief FOIA officer in 2017, correct?</p> <p>8 A Correct.</p> <p>9 Q Is this a document that you have</p> <p>10 reviewed prior to today's deposition?</p> <p>11 A I have seen this document before, yes.</p> <p>12 Q And -- and one of the sentences in this</p> <p>13 document is requesting that "each agency review</p> <p>14 its Chief FOIA Officer designation and make any</p> <p>15 necessary adjustment to ensure that the</p> <p>16 designated official is at the Assistant Secretary</p> <p>17 level or its equivalent, as required by the</p> <p>18 Freedom of Information Act."</p> <p>19 Did I read that correctly?</p> <p>20 A Yes.</p> <p>21 Q And it says that "The Department of</p> <p>22 Justice," who you represent today in the capacity</p> <p style="text-align: right;">Page 51</p>	<p>1 BY MR. ZORN</p> <p>2 Q Welcome back, Ms. Miller.</p> <p>3 A Thank you.</p> <p>4 MR. ZORN: Let's -- I'm going to ask</p> <p>5 you to pull up Exhibit 2. Before the break, we</p> <p>6 were talking a little bit about the scope of the</p> <p>7 deposition, and I just wanted to put the notice.</p> <p>8 (Deposition Exhibit Number 2</p> <p>9 was marked for identification.)</p> <p>10 BY MR. ZORN</p> <p>11 Q And is that Exhibit 2?</p> <p>12 A One moment, please. Okay.</p> <p>13 MR. RODRIGUEZ: I have Exhibit 2 as the</p> <p>14 FOIA statute.</p> <p>15 MR. ZORN: Oh, that was the second</p> <p>16 exhibit I introduced, but I put in -- shoot.</p> <p>17 It's --</p> <p>18 MR. RODRIGUEZ: Is it Exhibit 1?</p> <p>19 MR. ZORN: It's -- it should be --</p> <p>20 MR. RODRIGUEZ: So I have three</p> <p>21 exhibits in the file. Exhibit 1 is the FOIA</p> <p>22 letter final. Exhibit 8, chief FOIA officer</p> <p style="text-align: right;">Page 53</p>



<p>1 memo, and Exhibit 2, which is the statute.  2 MR. ZORN: So I -- there should be an  3 Exhibit 2 - 30(b)(6) depo notice.pdf --  4 MR. GRAY: Refresh the --  5 MR. ZORN: -- uploaded. If you -- you  6 have to refresh --  7 MR. RODRIGUEZ: Okay.  8 MR. ZORN: -- and it's -- it's -- I  9 kind of pre-titled some of them, and I'm  10 switching around the order. So the confusion is  11 my --  12 MR. RODRIGUEZ: Now we have it.  13 THE WITNESS: Okay.  14 MR. RODRIGUEZ: So I needed to refresh  15 the folder.  16 MR. ZORN: I needed to title these  17 things better, so multiple -- all right.  18 BY MR. ZORN  19 Q So we have 30(b)(6). This is 9:32 a.m.  20 And just let me know when you have it up.  21 A We do.  22 Q Okay. So do you see that this is a</p> <p style="text-align: right;">Page 54</p>	<p>1 fair?  2 A Correct.  3 Q The second is "The description of DEA's  4 FOIA processing office, including its location,  5 its general contents, and the employees working  6 in the FOIA processing office."  7 Did I read that correctly?  8 A You did.  9 Q And earlier we -- since -- since --  10 since we're on the topic, earlier, we spoke about  11 the structure of the DEA FOIA office, didn't we?  12 A We did.  13 Q And we said -- and you testified that  14 there was an intake office, and then there was a  15 processing office, and those two were different.  16 A We have three units, so I oversee three  17 units, one being the intake subunit, the  18 processing subunit, and the legal and external  19 affairs subunit --  20 Q All right.  21 A -- that make up the FOIA Privacy Act  22 unit at DEA.</p> <p style="text-align: right;">Page 56</p>
<p>1 notice of deposition 30(b)(6) to the U.S.  2 Department of Justice and U.S. Drug Enforcement  3 Administration?  4 A Yes.  5 Q And at the top of the page, you see  6 there's a blue header; is that correct? The very  7 top of the page.  8 A Yes.  9 Q All right. And let's go to page 3 of  10 the document and just confirm for me that it says  11 Exhibit A at the -- towards the top of the page.  12 A It does.  13 Q Okay. And then if we go to page 4,  14 you'll see there's a list of 30(b)(6) topics for  15 DOJ and DEA. Do you see that?  16 A I do.  17 Q And these are the topics that you are  18 prepared for and are prepared to testify today on  19 behalf of DOJ and DEA, true?  20 A Correct.  21 Q And the first topic, A1, is "The  22 structure and operation of DEA FOIA office,"</p> <p style="text-align: right;">Page 55</p>	<p>1 Q And I actually want to skip around  2 here. I'm just curious. Who makes the unusual  3 circumstances determination?  4 A Generally, the intake unit.  5 Q Okay. And what is that determination  6 based on?  7 A So at DEA, we will invoke unusual  8 circumstances any time we have to search for  9 records that are outside of our office, meaning  10 we do not have possession of all of DEA's  11 records.  12 We have many offices throughout  13 headquarters, the field. We have offices in  14 about 90 foreign countries. So we do not have  15 access to all of those records in my own office.  16 We have to rely on the record custodians to  17 retrieve those records for us.  18 Q So by office in your answer, you mean  19 the FOIA office?  20 A The FOIA office.  21 Q So any time a record that is requested  22 in a FOIA request that is not in the FOIA office</p> <p style="text-align: right;">Page 57</p>

<p>1 presents the unusual circumstances exception?</p> <p>2 A Correct.</p> <p>3 Q And we'll get into the documents in a</p> <p>4 moment, but what percentage of requests raise</p> <p>5 unusual circumstances at the Drug Enforcement</p> <p>6 Administration?</p> <p>7 A So we do not track the actual</p> <p>8 percentage. However, the data that reflects how</p> <p>9 often we invoke unusual circumstances is captured</p> <p>10 in the annual FOIA reports that are available on</p> <p>11 the OIP -- the Department of Justice Office of</p> <p>12 Information Policy website.</p> <p>13 There is a column there where you can</p> <p>14 see 20 or 30 days. 30 days indicates that we</p> <p>15 have invoked unusual circumstances for those</p> <p>16 cases for that particular fiscal year.</p> <p>17 Q Is a complex request always going to</p> <p>18 raise unusual circumstances?</p> <p>19 A So the definition of complex and simple</p> <p>20 is different than unusual circumstances.</p> <p>21 While there may be a close proxy there,</p> <p>22 complex and -- you know, to -- I would -- the</p> <p style="text-align: right;">Page 58</p>	<p>1 uses, you know, the paper-based filing systems</p> <p>2 that our offices all over the United States, you</p> <p>3 know, utilize.</p> <p>4 So we -- when we receive a FOIA</p> <p>5 request, oftentimes, we are searching for paper</p> <p>6 and electronic records. We simply don't have</p> <p>7 access to all that.</p> <p>8 Now, if for some reason I did have</p> <p>9 access to a record because maybe that record has</p> <p>10 been requested by another individual previously,</p> <p>11 we would have access. I would not be invoking</p> <p>12 unusual circumstances because I already have</p> <p>13 access. I'm just going to review it and release</p> <p>14 it again, if that makes sense.</p> <p>15 Q So the office has access to records</p> <p>16 that have been previously requested?</p> <p>17 A Correct.</p> <p>18 Q And if those records get requested a</p> <p>19 third time, then they have to get posted</p> <p>20 publicly?</p> <p>21 A We are supposed to post them, correct.</p> <p>22 Q So really the only time that I can tell</p> <p style="text-align: right;">Page 60</p>
<p>1 best way I can put this is that we define a</p> <p>2 complex case by any time that we feel it's going</p> <p>3 to take us more than a month to process records.</p> <p>4 The reason for that is, the records may involve a</p> <p>5 high volume. If we have hundreds of pages or</p> <p>6 thousands of pages for review, we're not going to</p> <p>7 be able to produce it within 30 days. So</p> <p>8 anything that takes us longer than 30 days, we</p> <p>9 deem that to be complex.</p> <p>10 Q Now, when you say in the FOIA office,</p> <p>11 are you talking about, like, physically, like,</p> <p>12 sitting in the FOIA office?</p> <p>13 A Yes. So I may need you to clarify,</p> <p>14 though, what you're asking me.</p> <p>15 Q Like, I'm curious about, like,</p> <p>16 electronic documents. So, like, you know --</p> <p>17 like -- well, I don't know. What do you mean --</p> <p>18 A Sure.</p> <p>19 Q -- by in the FOIA -- like, when is</p> <p>20 something located in the FOIA office?</p> <p>21 A Sure. So in my office, we do not have</p> <p>22 access to the hundreds of IT systems that DEA</p> <p style="text-align: right;">Page 59</p>	<p>1 that a record's going to be located in the FOIA</p> <p>2 office and not made available to the public is</p> <p>3 the second time that document is requested?</p> <p>4 A I'm -- I'm sorry. I'm not following</p> <p>5 that one. You may have to ask the question</p> <p>6 again.</p> <p>7 Q Well, you've testified -- and correct</p> <p>8 me if I'm wrong. You've testified that the FOIA</p> <p>9 office doesn't have access to basically DEA writ</p> <p>10 large documents, true?</p> <p>11 A That is true.</p> <p>12 Q In fact, it has access to surprisingly</p> <p>13 few documents, fair?</p> <p>14 A We do not have access to the majority</p> <p>15 of records that are requested by the public. We</p> <p>16 have to rely on the owners, the offices that own</p> <p>17 those records to retrieve them for us, to provide</p> <p>18 them to us so that we can process them and</p> <p>19 release them to a requester.</p> <p>20 Q Well, when you say own the records,</p> <p>21 well, how does one part of DEA own a record that</p> <p>22 the other part of -- like where does this concept</p> <p style="text-align: right;">Page 61</p>

<p>1 of ownership come from?</p> <p>2 A So we have, for example, I believe</p> <p>3 somewhere around 150 different IT systems in DEA</p> <p>4 that hold records. If you work, let's say, in</p> <p>5 the Office of Diversion, you may have your own</p> <p>6 record systems. We are not experts in how those</p> <p>7 systems operate, or we would not even have the</p> <p>8 knowledge on how to obtain access to the records</p> <p>9 that are in those systems. There are hundreds of</p> <p>10 systems.</p> <p>11 So we have to again rely on the subject</p> <p>12 matter experts in DEA from the, you know,</p> <p>13 hundreds of offices that we have to locate what</p> <p>14 we're asking for. We send them a copy of the</p> <p>15 FOIA request and a search memo, and -- and we ask</p> <p>16 them to provide the material to us, responsive</p> <p>17 material to us.</p> <p>18 Q And that's not unusual, is it?</p> <p>19 A No. We do this every day.</p> <p>20 Q Right. So those aren't unusual</p> <p>21 circumstances. Those are the -- almost always</p> <p>22 the circumstances?</p> <p style="text-align: right;">Page 62</p>	<p>1 A -- personnel size, like --</p> <p>2 Q And I --</p> <p>3 A -- personnel --</p> <p>4 Q And just to be clear, sensitive to</p> <p>5 national security, I don't want to know, like,</p> <p>6 the location or anything. I just want to know,</p> <p>7 like, how big is it physically.</p> <p>8 A I don't know that I know the answer to</p> <p>9 how large it is, but I can tell you that right</p> <p>10 now, in terms of staff size, I have 18 employees.</p> <p>11 So there are 18 employees including myself right</p> <p>12 now. We have a large number of staff vacancies</p> <p>13 right now. I currently have 20 vacancies that</p> <p>14 I'm trying to get filled.</p> <p>15 Q Okay. And -- and to be clear, those</p> <p>16 employees, they have, like, physical, like,</p> <p>17 office locations, cubicles? Like, what is it</p> <p>18 that they --</p> <p>19 A Cubicles, or pods, as we call them.</p> <p>20 Q And they don't actually, like, keep</p> <p>21 stacks of, like, records in their offices, do</p> <p>22 they?</p> <p style="text-align: right;">Page 64</p>
<p>1 A Well --</p> <p>2 MR. RODRIGUEZ: Objection. Calls for</p> <p>3 legal conclusion, but you can answer.</p> <p>4 THE WITNESS: The only time we're going</p> <p>5 to assert unusual circumstances is if I have to</p> <p>6 go outside of my office, meaning I do not have</p> <p>7 access in my own records system.</p> <p>8 I utilize one system. It's called</p> <p>9 FOIAXpress. This houses everything from start to</p> <p>10 finish of every FOIA case. If I don't have</p> <p>11 access to those records in that system, I then</p> <p>12 have to go to the record custodian or the</p> <p>13 division that owns the material to get it.</p> <p>14 BY MR. ZORN</p> <p>15 Q And the only way you would have access</p> <p>16 to that record in FOIAXpress is if you've gotten</p> <p>17 that record previously?</p> <p>18 A That exact request and exact timeline</p> <p>19 previously.</p> <p>20 Q How physically big is your office?</p> <p>21 A Are you talking about like --</p> <p>22 Q I --</p> <p style="text-align: right;">Page 63</p>	<p>1 A No.</p> <p>2 Q So when you -- so the records in the</p> <p>3 FOIA office are almost exclusively the records in</p> <p>4 FOIAXpress, fair?</p> <p>5 A Correct.</p> <p>6 Q And I'm not trying to repeat, but I</p> <p>7 just -- the only time a record is in the FOIA</p> <p>8 office if it is in FOIAXpress, right?</p> <p>9 A Correct.</p> <p>10 Q And the only time a record is in</p> <p>11 FOIAXpress is if it's been previously requested?</p> <p>12 A Correct.</p> <p>13 Q And that's because the DEA FOIA office</p> <p>14 doesn't have access to any of the other systems</p> <p>15 in which DEA keeps documents, fair?</p> <p>16 A That is correct.</p> <p>17 Q Okay. Does -- you know, by any chance,</p> <p>18 do you know why the DEA FOIA office doesn't have</p> <p>19 access to these other systems?</p> <p>20 A I don't know if I can answer the</p> <p>21 question as to why, but I can tell you again, we</p> <p>22 are not the subject matter experts in all the</p> <p style="text-align: right;">Page 65</p>

<p>1 various things that DEA does.</p> <p>2 So if I had to, for example, go to the</p> <p>3 Office of Diversion to pull material -- I mean,</p> <p>4 we would have to become experts in all the</p> <p>5 various offices, their records systems. You</p> <p>6 know, we'd have to have a thorough understanding</p> <p>7 of the content of those records. That is just</p> <p>8 not feasible with a staff of 18. We -- we are</p> <p>9 struggling as it is to keep up with the sheer</p> <p>10 volume of FOIA requests that come to DEA, so we</p> <p>11 again have to really rely on the subject matter</p> <p>12 experts to provide what we are asking them to</p> <p>13 provide, you know, the material responsive to</p> <p>14 these FOIA requests.</p> <p>15 Q Would it -- would it help if the FOIA</p> <p>16 office were allocated more money?</p> <p>17 A Right now, what we need is staff. We</p> <p>18 need to fill our vacancies. I think our budget</p> <p>19 is fairly adequate. However, we are struggling</p> <p>20 right now with the lack of personnel resources.</p> <p>21 Q Well, everyone, DEA's hiring, so -- but</p> <p>22 back -- back to this. Okay.</p> <p style="text-align: right;">Page 66</p>	<p>1 the DEA Museum.</p> <p>2 Q Never been to the museum. Don't know</p> <p>3 what's in there.</p> <p>4 So -- so -- hold on. So -- okay. So</p> <p>5 Stacey -- what was --</p> <p>6 A Strayer.</p> <p>7 Q Strayer. And do you know where this</p> <p>8 understanding of unusual circumstances came from?</p> <p>9 A Well, it is captured in the DOJ FOIA</p> <p>10 regulations, which can be found at 28 -- excuse</p> <p>11 me -- 28 CFR part 16. It defines unusual</p> <p>12 circumstances.</p> <p>13 Q How does it define unusual</p> <p>14 circumstances?</p> <p>15 A There are three prongs to this. The</p> <p>16 first prong is the one that we primarily invoke</p> <p>17 at DEA, which is any time that we need to search</p> <p>18 for records that are physically outside of our</p> <p>19 own office, we would invoke unusual</p> <p>20 circumstances.</p> <p>21 For example, we have offices all over</p> <p>22 the country are, 200 and -- 239 offices across</p> <p style="text-align: right;">Page 68</p>
<p>1 So this understanding of unusual</p> <p>2 circumstances, was that in place when you became</p> <p>3 the chief FOIA officer --</p> <p>4 A Yes.</p> <p>5 Q -- in 2017?</p> <p>6 A Yes.</p> <p>7 Q And who was the chief before you?</p> <p>8 A It was a gentleman by the name of</p> <p>9 Stacey Strayer.</p> <p>10 Q All right. And how long have you been</p> <p>11 working in DEA FOIA?</p> <p>12 A In FOIA, since 2017.</p> <p>13 Q Didn't you work in records before that?</p> <p>14 A So -- yes. I used to be the section</p> <p>15 chief over FOIA, records management and</p> <p>16 investigative records.</p> <p>17 After I had been in this role for two</p> <p>18 years, I had -- I wrote a proposal asking upper</p> <p>19 management to split our section. I wanted to</p> <p>20 basically turn FOIA into a section with three</p> <p>21 units, which we did. And we hired someone else</p> <p>22 to run records, investigative records, and now</p> <p style="text-align: right;">Page 67</p>	<p>1 the United States that are part of 23 field</p> <p>2 divisions. We don't have access to their</p> <p>3 records. We have to rely on the owners to</p> <p>4 provide the material to us. So we primarily</p> <p>5 invoke it for the first prong.</p> <p>6 There are two other prongs, one being</p> <p>7 any time that we have to consult with other</p> <p>8 agencies that may have equities in the documents.</p> <p>9 That also would qualify under the unusual</p> <p>10 circumstances.</p> <p>11 Q Well, so -- and I want to break down</p> <p>12 your answer there because -- and you've read the</p> <p>13 FOIA statute, right?</p> <p>14 A Yes.</p> <p>15 Q It uses the word "establishments,"</p> <p>16 right?</p> <p>17 A Uh-huh.</p> <p>18 Q Like establishments separate from the</p> <p>19 office processing the request?</p> <p>20 A Yes.</p> <p>21 Q And it talks about field offices as</p> <p>22 well. So --</p> <p style="text-align: right;">Page 69</p>

<p>1 A Yes.</p> <p>2 Q -- different physical locations</p> <p>3 elsewhere in the country, that -- let's put that</p> <p>4 into one bucket. Do you follow me?</p> <p>5 A Yes.</p> <p>6 Q But as I understand what you're --</p> <p>7 where -- where is -- like what building is the</p> <p>8 DEA FOIA office in?</p> <p>9 A We're part of DEA headquarters in</p> <p>10 Arlington, Virginia.</p> <p>11 Q Okay. And there other DEA divisions</p> <p>12 that are physically in headquarters, right?</p> <p>13 A That is correct.</p> <p>14 Q And the way I understand what you're</p> <p>15 saying is that the agency interprets unusual</p> <p>16 circumstances to mean -- across the hallway is</p> <p>17 unusual circumstances if that's not the DEA FOIA</p> <p>18 office; is that fair?</p> <p>19 A Yes.</p> <p>20 Q Okay. So if I had a -- if I took my</p> <p>21 outline here and walked across the hallway and</p> <p>22 put it in someone else's office and that person</p> <p style="text-align: right;">Page 70</p>	<p>1 A It would apply. And if I could share</p> <p>2 one more example.</p> <p>3 Q Sure.</p> <p>4 A We have some offices that are part of</p> <p>5 headquarters that are not physically located in</p> <p>6 the same buildings as the FOIA office. They are</p> <p>7 located in other parts of Virginia.</p> <p>8 For example, our Information Technology</p> <p>9 Division. If I get a FOIA request specifically</p> <p>10 for e-mail records, I cannot access anyone's</p> <p>11 e-mail records. I have to rely on the</p> <p>12 Information Technology Division to do that</p> <p>13 search. They are physically located outside of</p> <p>14 headquarters in another part of Virginia. They</p> <p>15 are the office that would provide those</p> <p>16 responsive materials to us.</p> <p>17 Q Is that the Morrisette building?</p> <p>18 A No. That's -- that's actually our</p> <p>19 mailing address. So that's -- that's not</p> <p>20 where -- that's not our physical address.</p> <p>21 Q But that's a building that you're</p> <p>22 referring to in Northern Virginia?</p> <p style="text-align: right;">Page 72</p>
<p>1 worked in some other division, we're now in --</p> <p>2 in -- we're now outside the FOIA office, right?</p> <p>3 A Uh-huh. Correct.</p> <p>4 Q Okay. And that's like 10 feet away.</p> <p>5 A Correct.</p> <p>6 Q Is that fair?</p> <p>7 A Correct.</p> <p>8 Q Okay. So this is a game of inches,</p> <p>9 right?</p> <p>10 MR. RODRIGUEZ: Objection.</p> <p>11 Argumentative.</p> <p>12 MR. ZORN: Okay.</p> <p>13 MR. RODRIGUEZ: You can answer.</p> <p>14 MR. ZORN: No. I withdraw the</p> <p>15 question.</p> <p>16 BY MR. ZORN</p> <p>17 Q You -- any -- any time you venture --</p> <p>18 no matter how far outside the FOIA office one is,</p> <p>19 whether cyberspace or physically, if you are</p> <p>20 outside the FOIA office but in the same building,</p> <p>21 you're -- the unusual circumstances applies,</p> <p>22 according to the agency?</p> <p style="text-align: right;">Page 71</p>	<p>1 A It is a building in Northern Virginia.</p> <p>2 Q Right. That's like 30 minutes away</p> <p>3 from headquarters --</p> <p>4 A Uh-huh.</p> <p>5 Q -- or less, right?</p> <p>6 A But that is not where the Information</p> <p>7 Technology Division is located --</p> <p>8 Q Okay. Well --</p> <p>9 A -- no.</p> <p>10 Q -- we don't need to get into --</p> <p>11 A Right.</p> <p>12 Q -- specifically where it is, but it's</p> <p>13 in the same state, though, right?</p> <p>14 A In the same state.</p> <p>15 Q So -- but obtaining those records from</p> <p>16 the IT Division is -- is done over the Internet,</p> <p>17 true?</p> <p>18 A It is done through an electronic means.</p> <p>19 Q So no one's physically going down and,</p> <p>20 like, picking up, like, a box of records or even</p> <p>21 a USB drive, right?</p> <p>22 A Not for e-mail records, no.</p> <p style="text-align: right;">Page 73</p>

<p>1 Q Okay. So it's really, you know -- and</p> <p>2 maybe you can't answer this -- but it's not any</p> <p>3 more or less convenient than if it were in the</p> <p>4 same building, because it's transmitted the same</p> <p>5 way, right?</p> <p>6 A The process would be the same if they</p> <p>7 were physically located inside of our -- meaning</p> <p>8 a part of headquarters in Arlington.</p> <p>9 Q Right. So would you say that -- that</p> <p>10 invoking the unusual circumstances would be</p> <p>11 necessary to process a request that was</p> <p>12 electronically transmitted outside versus one</p> <p>13 that would be electronically processed inside?</p> <p>14 A Correct.</p> <p>15 Q There's no, like, additional cost or</p> <p>16 time based on where the documents are located if</p> <p>17 the transfer is going to be electronic; is that</p> <p>18 fair?</p> <p>19 A That's fair.</p> <p>20 Q But there is -- there is an access</p> <p>21 concern, and that's kind of what you've been</p> <p>22 testifying about, right? Like you personally --</p> <p style="text-align: right;">Page 74</p>	<p>1 A No, it was not.</p> <p>2 Q And maybe it just grew over time; fair?</p> <p>3 A I just want to make sure I'm following</p> <p>4 the line of questioning here.</p> <p>5 So if we're talking about the vast --</p> <p>6 like the sheer volume of record systems that are</p> <p>7 out there, yes, we do -- we do not -- I did not</p> <p>8 create that, right?</p> <p>9 Q Right.</p> <p>10 A But, again, I don't -- we do not -- the</p> <p>11 FOIA office does not have access to the material</p> <p>12 that is in all of those 150-plus systems.</p> <p>13 Q So do you happen to know when DEA</p> <p>14 adopted this interpretation of unusual</p> <p>15 circumstances?</p> <p>16 A We have been following this for --</p> <p>17 again, we follow the DOJ FOIA regulations. All</p> <p>18 of the components under DOJ are following the</p> <p>19 same regulations.</p> <p>20 So our interpretation and OIP's</p> <p>21 interpretation of the statute is that if we have</p> <p>22 to -- if we do not have access to the records, we</p> <p style="text-align: right;">Page 76</p>
<p>1 sorry. Let me -- let me just -- I'll just strike</p> <p>2 all that, and let me reask the question.</p> <p>3 Like you, Ms. Miller, can't access</p> <p>4 those records, right?</p> <p>5 A Correct.</p> <p>6 Q You need to reach out to another</p> <p>7 division within DEA to get access to the records,</p> <p>8 right?</p> <p>9 A Correct.</p> <p>10 Q And that necessarily takes additional</p> <p>11 time, right?</p> <p>12 A It takes time. It does.</p> <p>13 Q So there is a -- and you did not create</p> <p>14 that process, did you?</p> <p>15 A The search process?</p> <p>16 Q Well, just even the way this is</p> <p>17 structured. Like, that was in place when you got</p> <p>18 there.</p> <p>19 A That was in place when I arrived.</p> <p>20 Q Right. So -- and so that wasn't like a</p> <p>21 design choice that Ms. Kelleigh Miller made about</p> <p>22 the way DEA keeps its records, right?</p> <p style="text-align: right;">Page 75</p>	<p>1 have to go, you know, physically outside of our</p> <p>2 office to gain access to those records, we would</p> <p>3 invoke unusual circumstances.</p> <p>4 Q So this is not a DEA policy. It is a</p> <p>5 Department of Justice --</p> <p>6 A Department-wide.</p> <p>7 Q Okay. So this is -- the entire</p> <p>8 Department of Justice, it is its position that if</p> <p>9 a record is outside the FOIA office that unusual</p> <p>10 circumstances applies?</p> <p>11 A Correct.</p> <p>12 Q That's -- the United States Department</p> <p>13 of Justice is taking that -- that position under</p> <p>14 oath today in this -- this room?</p> <p>15 A We have consulted with OIP on this</p> <p>16 issue, and their position is that, yes, if it is</p> <p>17 outside of our own office -- again, we don't have</p> <p>18 access to the material. We have to rely on</p> <p>19 offices across DEA -- that unusual circumstances</p> <p>20 does apply.</p> <p>21 Q And, again, I'm not suggesting that</p> <p>22 anyone at DEA intentionally structured the office</p> <p style="text-align: right;">Page 77</p>



<p>1 the way it did. But let's say an office did 2 intentionally structure it that way. It -- 3 the -- basically, there's nothing to stop an 4 agency from creating a FOIA office and divesting 5 it of records, is there?</p> <p>6 MR. RODRIGUEZ: Objection. Foundation. 7 THE WITNESS: I'm not sure I understand 8 the question. I'm sorry. 9 BY MR. ZORN 10 Q Well, let me -- let me lay some 11 foundation. 12 So the way DOJ processes requests is it 13 farms out to its components; fair?</p> <p>14 A At DEA, yes. We -- 15 Q DOJ -- 16 A -- farm out -- 17 Q DOJ. So DOJ doesn't -- DOJ doesn't 18 actually have a FOIA office, right? 19 A Well, the Office of Information Policy, 20 I would consider to be their FOIA office. 21 Q Right. And there are documents 22 produced in this case that break down by</p> <p style="text-align: right;">Page 78</p>	<p>1 happen to know if any of those other components 2 have FOIA offices like DEA?</p> <p>3 A They all have FOIA offices, but I can't 4 speak to their record systems and operations 5 specifically. 6 Q And you're not here to testify on 7 behalf of those. 8 But, you know, my question is, you 9 know -- you know, there's nothing that restricts 10 an agency from being able to have a FOIA office 11 with no records, right? 12 A There -- I'm not sure how to best 13 answer this. There's nothing that restricts, 14 but, again, when you're talking about an office 15 of 18 people, it would be next to impossible for 16 us to gain access to 150 systems, know how they 17 operate, know where to find, locate their 18 records. 19 This is an impossible operation. I 20 would have to have a much larger staff and -- and 21 the ability to learn the ins and outs of all the 22 various systems. It just doesn't make a lot of</p> <p style="text-align: right;">Page 80</p>
<p>1 different DOJ components, such as ATF, FBI, DEA, 2 and each of those components handles their own -- 3 A Their own -- 4 Q -- FOIA requests? 5 A Uh-huh. 6 Q Yeah. So -- and what you said about 7 the policy today, testifying as Department of 8 Justice, that's the policy across every component 9 in the -- the -- 10 A We -- 11 Q -- Department of Justice? 12 A We all follow the Department of Justice 13 FOIA regulations, yes. 14 Q Okay. So that's -- that's the ATF's 15 policy. 16 A Uh-huh. 17 Q And I'm mindful of Judge Hughes's sort 18 of limitation, but I'm just talking about the DOJ 19 policy here. That's the FBI policy. It's the 20 ATF policy. Fair? 21 A Yes. 22 Q Okay. And -- and, you know, do you</p> <p style="text-align: right;">Page 79</p>	<p>1 sense. 2 Q But -- but I guess my question is 3 just -- there's -- there's -- there's no -- 4 there's nothing in the law that -- that precludes 5 an agency such as DEA that you are aware of from 6 just not keeping any records at all, right? 7 A The records that we have would be 8 housed in FOIAXpress. So as we mentioned -- as I 9 mentioned previously, there are a number of 10 requests that we receive. We've gotten that 11 exact request in the past. We would go into the 12 system, reproduce and release those records. 13 There are -- there are other 14 circumstances where, again, we would not invoke 15 unusual circumstances. For example, if there are 16 no -- if there are no records, if we know from 17 the beginning of the receipt of that request, I 18 don't have any records on this matter, a letter 19 is going to go out to the requester telling them 20 that. I'm not invoking unusual circumstances. 21 Q Well, interestingly, though -- let's -- 22 let's start on that, because one of the topics</p> <p style="text-align: right;">Page 81</p>



<p>1 noticed today are my requests. And one of my 2 requests, there wasn't any responsive records. 3 Do you recall that? 4 A You had -- I believe there were two 5 that we did searches and -- which yielded no 6 records. 7 Q In fact, one of those records related 8 to -- one of those requests related to 9 transcripts from a 1975 proceeding. Do you -- do 10 you -- 11 A I do -- 12 Q -- recall that? 13 A -- recall that, yes. 14 Q Yes. And there were no records on 15 that, but the agency did invoke unusual 16 circumstances, didn't it? 17 A Yes. 18 Q And so, in fact, there are situations 19 where the agency invokes unusual circumstances, 20 but there are no records, right? 21 A Yeah. So that situation is a little 22 different than what I was just describing. So,</p> <p style="text-align: right;">Page 82</p>	<p>1 you know, or transcripts from an ALJ case, yes, 2 I'm going to the Office of Administrative Law 3 Judge to get those records. 4 Q And filings in DEA administrative cases 5 are done through an e-mail inbox, true? 6 A I do not have any knowledge of that. 7 Q Okay. Well, this is a noticed topic, 8 and I don't want to dwell on it, but I believe -- 9 let's see. We have the exhibit, the notice, up, 10 right, which is records from DEA proceedings, 11 which is -- I guess I can ask the question 12 differently and maybe -- maybe you will know. 13 This is F13 and 14, but -- 14 MR. RODRIGUEZ: Yeah. Just to be 15 clear -- 16 MR. ZORN: Yeah. 17 MR. RODRIGUEZ: -- I mean, we 18 interpreted these topics as they relate to FOIA. 19 I mean, to the extent that you want her to speak 20 to recordkeeping in administrative proceedings 21 unrelated to FOIA, I mean, we didn't prepare for 22 that, and I don't -- I don't --</p> <p style="text-align: right;">Page 84</p>
<p>1 again, in this situation, we have to do a 2 search -- we'd have to go to the Office of the 3 Administrative Law Judges. Again, we have no 4 access to their records. Their records are 5 maintained both electronically, and some of their 6 records are even housed in the Federal Records 7 Center, which is in another state. 8 So, again, we have to rely on the 9 owners in that office, the custodians, record 10 custodians, to retrieve all of that -- all of the 11 responsive material and provide it to our office. 12 Q So, you know, I want to go back to all 13 this, but now that we're talking about the ALJ's 14 office, this is another topic, which is 15 administrative proceedings. 16 So are all records from administrative 17 proceedings kept in the ALJ's office? 18 A Yes. 19 Q So this is not kept at DEA outside of 20 the ALJ's office, are they? 21 A To my knowledge -- and, again, if we 22 receive a FOIA request asking for proceedings,</p> <p style="text-align: right;">Page 83</p>	<p>1 MR. ZORN: Yeah. And to be fair, 2 Jimmy, I'm reading exactly what the topic is, and 3 I think she is providing the -- 4 MR. RODRIGUEZ: Okay. 5 MR. ZORN: -- information which is -- 6 she's talking -- basically, the topic is records 7 already filed. So I'm not expecting her to be 8 knowledgeable about the filing process because 9 that wasn't, you know -- 10 MR. RODRIGUEZ: But, I mean, you're 11 certainly welcome to ask, and if she has personal 12 knowledge -- 13 MR. ZORN: That -- that's fine. 14 MR. RODRIGUEZ: Yeah. 15 MR. ZORN: I'm not -- like I said, I'm 16 not here to quiz you on what you are or are not 17 prepared. I'm genuinely interested in learning. 18 MR. RODRIGUEZ: And I think on the 19 topics where you have actual FOIA requests 20 pending related to that, I mean, I think it's 21 only fair that you're entitled to more leeway 22 there.</p> <p style="text-align: right;">Page 85</p>

<p>1 BY MR. ZORN</p> <p>2 Q Okay. So -- so forgetting about how --</p> <p>3 how records are filed and just talking about</p> <p>4 records that have already been filed in these</p> <p>5 administrative proceedings, you say that those</p> <p>6 are kept in the ALJ offices; true?</p> <p>7 A Yes.</p> <p>8 Q And how does the public access those</p> <p>9 records?</p> <p>10 A They would have to file a FOIA request.</p> <p>11 Q And the only way a public -- a member</p> <p>12 of the public can get access to those records is</p> <p>13 by filing a FOIA request; true?</p> <p>14 A Yes, with the exception of things like</p> <p>15 the -- any decision or order by the</p> <p>16 administrative law judge is posted on DEA.gov, so</p> <p>17 that information is accessible to the public, but</p> <p>18 anything beyond that, we would -- they would have</p> <p>19 to submit a FOIA request to DEA for --</p> <p>20 Q So --</p> <p>21 A -- access.</p> <p>22 Q And we've established that these FOIA</p> <p style="text-align: right;">Page 86</p>	<p>1 will help my client -- I don't know -- escape</p> <p>2 charges from the DEA.</p> <p>3 Do you -- do you follow me?</p> <p>4 A Yes.</p> <p>5 Q Okay. I can't get those records any</p> <p>6 other way except through FOIA, right?</p> <p>7 A That is correct.</p> <p>8 Q But the likelihood I'm going to get</p> <p>9 that record before the hearing is slim, right?</p> <p>10 A Depending on, again, the volume and the</p> <p>11 complexity and what's being asked, I mean, it</p> <p>12 probably would be difficult to produce in 30</p> <p>13 days.</p> <p>14 Q In fact, it's almost -- are you</p> <p>15 familiar with how these administrative hearings</p> <p>16 work? If you're not, then --</p> <p>17 A I'm not an expert in this, no.</p> <p>18 Q Okay. Well, let's assume from a</p> <p>19 hypothetical that the administrative law judge</p> <p>20 requires each side to declare their evidence</p> <p>21 within 90 days of the hearing.</p> <p>22 Do you follow me?</p> <p style="text-align: right;">Page 88</p>
<p>1 requests -- that -- that request would</p> <p>2 necessarily raise unusual circumstances, true?</p> <p>3 A It would.</p> <p>4 Q So we're talking about more than 30</p> <p>5 days to deliver that request?</p> <p>6 A Yes.</p> <p>7 Q So I want to -- I want to kind of</p> <p>8 construct a hypothetical, and I'm going to ask if</p> <p>9 you follow me. I -- I represent client A.</p> <p>10 Do you follow me?</p> <p>11 A Uh-huh.</p> <p>12 Q I'm in a --</p> <p>13 A Yes.</p> <p>14 Q -- DEA administrative proceeding.</p> <p>15 Do you follow me?</p> <p>16 A Yes.</p> <p>17 Q The administrative law judge sets a</p> <p>18 timed hearing three months from now.</p> <p>19 Do you follow me?</p> <p>20 A Yes.</p> <p>21 Q And I believe that there is a useful</p> <p>22 record in a prior administrative proceeding that</p> <p style="text-align: right;">Page 87</p>	<p>1 A Uh-huh.</p> <p>2 Q So now we're talking a month and a half</p> <p>3 of getting -- getting records that I believe are</p> <p>4 going to exculpate my client.</p> <p>5 Do you follow my hypothetical?</p> <p>6 A Yes.</p> <p>7 Q There's -- there's almost no way that I</p> <p>8 can get any of those records from the ALJ's</p> <p>9 office, is there?</p> <p>10 A Not directly from the ALJ's office, no.</p> <p>11 Q No. And if I ask -- well, so I'd have</p> <p>12 to file a FOIA request with your office?</p> <p>13 A Yes.</p> <p>14 Q Your office is going to say there are</p> <p>15 unusual circumstances; true?</p> <p>16 A Uh-huh. Yes.</p> <p>17 Q And it's going to take more than 90</p> <p>18 days for me to get those records; true?</p> <p>19 A Yes. I would say it's definitely going</p> <p>20 to take more than 30 days.</p> <p>21 Q Okay. And you're going to -- if I'm</p> <p>22 representing a client that isn't the news media</p> <p style="text-align: right;">Page 89</p>

<p>1 or a nonprofit or non-commercial, you're going to</p> <p>2 charge me for that, right?</p> <p>3 A We only charge what we call review</p> <p>4 fees. We have search and review fees. DEA</p> <p>5 generally does not charge search fees any longer.</p> <p>6 Q Okay.</p> <p>7 A This is because the -- the FOIA</p> <p>8 Improvement Act of 2016 really limited our</p> <p>9 ability to charge search fees. I would have to</p> <p>10 be able to produce the records within 30 days in</p> <p>11 order to maintain the fee. There are some</p> <p>12 exceptions to that rule, but generally we do not</p> <p>13 charge requesters search any longer.</p> <p>14 Review fees are only charged to</p> <p>15 commercial use requesters. So if a requester</p> <p>16 has, again, a profit, trade or commercial</p> <p>17 interest and use for the records, we would -- we</p> <p>18 would charge a review fee. That is done after</p> <p>19 we've collected all the records and we have the</p> <p>20 ability to assess that fee. We need to see how</p> <p>21 much, what's the volume of -- you know, of</p> <p>22 records that we're going to be -- that we will</p> <p style="text-align: right;">Page 90</p>	<p>1 three boxes, 3 cubic feet of records that were</p> <p>2 provided to our office.</p> <p>3 And we have to go through all of the</p> <p>4 material to see, you know, what it -- what is</p> <p>5 responsive, what is releasable to you, what may</p> <p>6 require redactions, is there third-party</p> <p>7 information within any of the records. So there</p> <p>8 is a very heavy and labor-intensive review</p> <p>9 process that has to, you know, occur with the</p> <p>10 review here.</p> <p>11 Q And I hear what you're saying, but we</p> <p>12 can agree that filings in an administrative</p> <p>13 proceeding are -- these are public proceedings,</p> <p>14 right?</p> <p>15 A Yes.</p> <p>16 Q And some filings are sometimes made</p> <p>17 under seal. Do you know what that is?</p> <p>18 A Yes.</p> <p>19 Q Okay. But public filings are public</p> <p>20 documents, right?</p> <p>21 A Yes.</p> <p>22 Q Why -- why does the DEA FOIA office</p> <p style="text-align: right;">Page 92</p>
<p>1 need to process.</p> <p>2 Q And we'll -- we'll talk about that.</p> <p>3 We'll talk about the review fees. I think that</p> <p>4 was -- that's one of the topics.</p> <p>5 But just -- just as a general kind of,</p> <p>6 you know, yes -- yes, no, is -- the agency will</p> <p>7 charge my -- my hypothetical commercial client</p> <p>8 for the review and production of records that</p> <p>9 were filed in an administrative proceeding,</p> <p>10 right?</p> <p>11 A (Nodding.)</p> <p>12 Q Is that fair?</p> <p>13 A Yes.</p> <p>14 Q Aren't these proceedings public?</p> <p>15 A To my knowledge, they are open to the</p> <p>16 public.</p> <p>17 Q What -- what FOIA exemption would apply</p> <p>18 to any of the material filed in a public</p> <p>19 proceeding?</p> <p>20 A So there are a lot of records that we</p> <p>21 get from the ALJ's office. In fact, one of your</p> <p>22 requests, I think we received over 5,000 -- I had</p> <p style="text-align: right;">Page 91</p>	<p>1 need to review those for exemptions?</p> <p>2 MR. RODRIGUEZ: Objection. It's asked</p> <p>3 and has been answered, but you can answer again.</p> <p>4 THE WITNESS: So is the -- I'm sorry.</p> <p>5 Could you ask the question again?</p> <p>6 BY MR. ZORN</p> <p>7 Q Let me phrase it a little bit</p> <p>8 differently and get more directly to what I'm</p> <p>9 asking.</p> <p>10 Is there any threshold determination at</p> <p>11 DEA to determine whether or not, like, a review</p> <p>12 needs to be conducted on a document because it's</p> <p>13 a -- it's a public document?</p> <p>14 A So if we know that the document has</p> <p>15 already been made publicly available, we are</p> <p>16 releasing it to you in full, and we actually did</p> <p>17 that for one of your cases. I know that you had</p> <p>18 asked for records that were relative to some</p> <p>19 training that was given at a university.</p> <p>20 When I spoke -- and I personally spoke</p> <p>21 to the record custodian to make sure that we had</p> <p>22 everything and she said, yes, this was -- this</p> <p style="text-align: right;">Page 93</p>

<p>1 was -- I gave this presentation publicly. So</p> <p>2 there's no reason for me to at that point, right,</p> <p>3 review and determine do I need to place</p> <p>4 exemptions. We released everything to you in</p> <p>5 full.</p> <p>6 Q Right. And so I'm saying, wouldn't</p> <p>7 that same process apply to documents filed</p> <p>8 publicly in an administrative proceeding?</p> <p>9 A Generally, yes, but, again, we'd have</p> <p>10 to identify -- we have to be able to identify</p> <p>11 which records have been publicly filed.</p> <p>12 Q And there's no -- there's no way to</p> <p>13 identify that?</p> <p>14 A It's part of the -- it's part of the</p> <p>15 review process, yes.</p> <p>16 Q And that's because the administrative</p> <p>17 law judge's office doesn't put any, like, marker</p> <p>18 on the documents, right?</p> <p>19 A I can't say a marker, but we probably</p> <p>20 would be having a conversation with them about</p> <p>21 which records were publicly filed. That would be</p> <p>22 part of that review process.</p> <p style="text-align: right;">Page 94</p>	<p>1 who's a judicial law clerk for ALJ Wallbaum,</p> <p>2 correct?</p> <p>3 A I spoke to Cotter?</p> <p>4 Q Sorry. Some FOIA -- the FOIA staff</p> <p>5 spoke to Ms. Cotter in response to one of my</p> <p>6 requests to discuss psilocybin, and she is a</p> <p>7 judicial law clerk in the ALJ's office for</p> <p>8 Ms. Wallbaum. If you don't recall now, we'll get</p> <p>9 the document out --</p> <p>10 A Yeah, I don't recall.</p> <p>11 Q -- and it will be -- it will be better</p> <p>12 to do it that way.</p> <p>13 But -- but more generally, your office</p> <p>14 will interface with the ALJ's office --</p> <p>15 A Yes.</p> <p>16 Q -- and then ask them if these were</p> <p>17 public or not. Is that a fair --</p> <p>18 A That is correct.</p> <p>19 Q And that's just -- if they had</p> <p>20 something on the document that said this was</p> <p>21 filed, you wouldn't need to do that --</p> <p>22 A Correct.</p> <p style="text-align: right;">Page 96</p>
<p>1 Q Has anyone ever just -- and you may not</p> <p>2 know this, but just in your personal knowledge,</p> <p>3 if Jimmy will give me the latitude, I mean, has</p> <p>4 anyone ever discussed, like, this issue with them</p> <p>5 of, like, the records that they keep in making</p> <p>6 filings, like, straightforward to request since</p> <p>7 the only way to get them is through FOIA?</p> <p>8 A Again, I'm not sure I'm following the</p> <p>9 question. I'm sorry.</p> <p>10 Q Well, it sounds like that the reason --</p> <p>11 and just correct me if I'm wrong -- the reason</p> <p>12 that your office needs to review these documents</p> <p>13 is because you can't look at the document on its</p> <p>14 face and determine if it was a public filing,</p> <p>15 right?</p> <p>16 A That is generally true, right. We need</p> <p>17 to rely on the -- again, the experts, the subject</p> <p>18 matter experts to tell us, has this been publicly</p> <p>19 filed.</p> <p>20 Q Right. And so I noticed in the</p> <p>21 notes -- and that's one of the documents I have</p> <p>22 selected today -- but you spoke to Ms. Cotter,</p> <p style="text-align: right;">Page 95</p>	<p>1 Q -- would you? Okay.</p> <p>2 So -- well, that answers that. Okay.</p> <p>3 So -- and there's no -- there's no</p> <p>4 electronic filing system that you're aware of for</p> <p>5 the DEA administrative proceedings, are there --</p> <p>6 is there?</p> <p>7 A I am not intimately familiar with their</p> <p>8 system, but I know they have an electronic system</p> <p>9 that they utilize that's fairly new, and they</p> <p>10 also maintain a large number of records at the</p> <p>11 Federal Records Center.</p> <p>12 So, oftentimes, when we're sending FOIA</p> <p>13 requests to their office, they have to pull those</p> <p>14 from the Federal Records Center for us, the paper</p> <p>15 files.</p> <p>16 Q Okay. And -- but are you aware of --</p> <p>17 there's no, like, electronic -- when you're</p> <p>18 talking about getting records, you're asking them</p> <p>19 to collect the records for you, right?</p> <p>20 A Correct.</p> <p>21 Q There's no way for you to log into any</p> <p>22 system and get the records for yourself, right?</p> <p style="text-align: right;">Page 97</p>

<p>1 A That is correct.</p> <p>2 Q And is there any -- any office within</p> <p>3 DEA that -- that -- that -- where you can just</p> <p>4 log in to some document system and get the</p> <p>5 documents for yourself?</p> <p>6 A We can in one circumstance, and this</p> <p>7 generally has to do with our investigative</p> <p>8 matters, which is somewhat sensitive, so I won't</p> <p>9 give a lot of detail. But my staff does have</p> <p>10 access to those, and we can generally handle</p> <p>11 certain types of requests for investigative</p> <p>12 matters quicker.</p> <p>13 Q Right. But there's no system where --</p> <p>14 well, okay. Let me -- let me then take a step</p> <p>15 back.</p> <p>16 Who -- when a FOIA request comes in and</p> <p>17 you need to go to another office -- do you follow</p> <p>18 me?</p> <p>19 A Yes.</p> <p>20 Q You reach out to that office. Is</p> <p>21 that --</p> <p>22 A We send them what we call a search memo</p> <p style="text-align: right;">Page 98</p>	<p>1 Q And potentially more complete, right?</p> <p>2 A Correct.</p> <p>3 Q In fact, you know, is there -- is there</p> <p>4 any agency mechanism to check to see if a</p> <p>5 records -- a custodian of records accurately gave</p> <p>6 you the -- the right set of records?</p> <p>7 A Well, this is exactly why my preference</p> <p>8 has been to go to the Information Technology</p> <p>9 Division. I do not -- as of now, I don't rely on</p> <p>10 the individual to pull their own records. I</p> <p>11 don't believe that it's -- it's as accurate.</p> <p>12 Q Yeah. And has that actually been the</p> <p>13 FOIA office's experience that it sometimes isn't</p> <p>14 accurate?</p> <p>15 A That has -- we have had some -- some</p> <p>16 issues, minor issues in the past with this.</p> <p>17 Q Has there ever -- I'm getting a little</p> <p>18 far afield here, but has there ever been an</p> <p>19 instance where the records were omitted without</p> <p>20 cause?</p> <p>21 A So I cannot think of a specific</p> <p>22 instance of this, but, again, I think if we allow</p> <p style="text-align: right;">Page 100</p>
<p>1 along with a copy of the request letter, and</p> <p>2 sometimes we, you know, even specifically tell</p> <p>3 them what we're looking for.</p> <p>4 Q Right. And then that office is the</p> <p>5 office that does the search for responsiveness.</p> <p>6 Is that fair?</p> <p>7 A Correct.</p> <p>8 Q Like, the FOIA office isn't the one</p> <p>9 that actually determines the initial set of what</p> <p>10 records are responsive?</p> <p>11 A Generally, no.</p> <p>12 Q So if I wanted Theresa Carbonaro's</p> <p>13 e-mails -- do you follow me?</p> <p>14 A Yes.</p> <p>15 Q Theresa Carbonaro's going to be the one</p> <p>16 searching her own e-mails, right?</p> <p>17 A Potentially, yes, but we will go to</p> <p>18 the -- generally, we will go to the office of --</p> <p>19 I'm sorry -- it's the Information Systems</p> <p>20 Division -- to have them do the e-mail search</p> <p>21 because we believe that the search would be more</p> <p>22 accurate if we let the IT experts do it.</p> <p style="text-align: right;">Page 99</p>	<p>1 a tool, an IT tool to do the work for us, it will</p> <p>2 be much more accurate than letting a human do it.</p> <p>3 Q Okay. But right now there is some --</p> <p>4 still some human element to this collection</p> <p>5 process, correct?</p> <p>6 A For things that are outside of e-mail.</p> <p>7 Q Okay. Where was I?</p> <p>8 MR. RODRIGUEZ: I think we were done.</p> <p>9 MR. ZORN: I'm learning -- I'm learning</p> <p>10 so much here. I was looking -- okay.</p> <p>11 BY MR. ZORN</p> <p>12 Q So -- so, you know, I do want to look</p> <p>13 here at Topic 3C. I believe A and B have been</p> <p>14 covered.</p> <p>15 A Pardon me.</p> <p>16 Q No, it's all good.</p> <p>17 A I just dropped something. I'll get it.</p> <p>18 MR. RODRIGUEZ: So I have a hard copy</p> <p>19 of the notice, and I'm going to let the witness</p> <p>20 look at it. I think it's just --</p> <p>21 MR. ZORN: I have no objection to that.</p> <p>22 THE WITNESS: Thank you.</p> <p style="text-align: right;">Page 101</p>

<p>1 BY MR. ZORN</p> <p>2 Q So the percentage or proportion of FOIA</p> <p>3 requests that were marked by DEA as raising</p> <p>4 unusual circumstances in 2020, 2021 and 2022,</p> <p>5 we're going to pull up the document, the FY</p> <p>6 documents that were produced, but I just want to</p> <p>7 be clear about my thinking in this, which is --</p> <p>8 so complex is not necessarily unusual</p> <p>9 circumstances?</p> <p>10 A Close proxy, but not necessarily,</p> <p>11 because, again, these definitions are very</p> <p>12 different.</p> <p>13 Q Okay. And let's just skip to D, then,</p> <p>14 which is -- so the only time a request isn't</p> <p>15 going to raise unusual circumstances is when that</p> <p>16 document is in the FOIAXpress?</p> <p>17 A That's one example, and then we have</p> <p>18 other types of requests.</p> <p>19 Like if we already know upon receipt of</p> <p>20 the request that we would not have access to</p> <p>21 that, or maybe a member of the public is asking</p> <p>22 for records that DEA simply does not maintain --</p> <p style="text-align: right;">Page 102</p>	<p>1 they will tell them that we are invoking unusual</p> <p>2 circumstances, and they tell them why, because we</p> <p>3 have to go outside of our own office.</p> <p>4 Q And it's a -- it's a totally binary</p> <p>5 determination in the sense that if it's one</p> <p>6 document somewhere else, it's the same as 100</p> <p>7 documents somewhere else, right? The --</p> <p>8 A Yes.</p> <p>9 Q The actual burden of -- of what's being</p> <p>10 requested is not evaluated except where the</p> <p>11 documents are, right?</p> <p>12 A Could you ask that again? I'm sorry.</p> <p>13 I want to make sure I'm following.</p> <p>14 Q Okay. So the -- the -- it's -- it</p> <p>15 doesn't -- the agency doesn't evaluate how</p> <p>16 burdensome it would be to produce records or,</p> <p>17 frankly, even just make a determination as to</p> <p>18 whether it will produce records. The only</p> <p>19 determination is: Where are the records?</p> <p>20 A No, that is not accurate. I think that</p> <p>21 we do -- we do consider how burdensome a request</p> <p>22 is.</p> <p style="text-align: right;">Page 104</p>
<p>1 that's one example -- we're not going to assert</p> <p>2 unusual circumstances. We're simply going to try</p> <p>3 to cut a letter and get it out to the requester</p> <p>4 as fast as possible to inform them that we don't</p> <p>5 have -- you know, we don't maintain records on</p> <p>6 this topic.</p> <p>7 Q And I've asked this question, but I</p> <p>8 think I want to drill down on it. So when is the</p> <p>9 unusual circumstances determination made?</p> <p>10 A When? It's made -- so when a request</p> <p>11 comes in through our intake unit -- intake</p> <p>12 handles that -- you know, that -- the beginning,</p> <p>13 basically, the initial process of reviewing a</p> <p>14 request, determining that, you know, we're ready</p> <p>15 to move forward with a search.</p> <p>16 So they're -- if they determine that we</p> <p>17 have to go outside of our own office -- we don't</p> <p>18 have access to those records in our system -- we</p> <p>19 then -- they will invoke the unusual</p> <p>20 circumstances.</p> <p>21 So they send an acknowledgment e-mail</p> <p>22 to the requester, and within that acknowledgment,</p> <p style="text-align: right;">Page 103</p>	<p>1 And I'll -- just to share an example,</p> <p>2 we use what we call multi-track processing. So</p> <p>3 let's say we've invoked unusual circumstances.</p> <p>4 We've collected the records. We will designate</p> <p>5 requests based on, basically, three categories,</p> <p>6 whether it's simple, complex or expedited. So if</p> <p>7 something has been granted expedited treatment,</p> <p>8 we have to prioritize those. We're generally</p> <p>9 working to get these requests completed first,</p> <p>10 right?</p> <p>11 Q Sure.</p> <p>12 A Requests are generally handled in a</p> <p>13 first-in, first-out basis based on the queue that</p> <p>14 we've placed them in, but simple requests, I</p> <p>15 mean, I do not want to have a one or two-page</p> <p>16 response sitting in a queue for a year, right?</p> <p>17 That is not helpful to the public.</p> <p>18 So we have set up particular buckets or</p> <p>19 queues, if you will, so that the management team</p> <p>20 and I can keep eyes on these and we can get these</p> <p>21 out faster. So even if we had to invoke unusual</p> <p>22 circumstances and I get two pages back from the</p> <p style="text-align: right;">Page 105</p>



<p>1 field, it's going in a queue so that I know I 2 need to get these out. These are -- these are 3 small cases. We don't want to be hanging on to 4 those.</p> <p>5 Q So two pages from the field, that's 6 unusual circumstances?</p> <p>7 A It would be, because, again, we don't 8 have access to the system the material is housed, 9 and we need to rely on them to provide it to us 10 for processing.</p> <p>11 Q And we can agree that the unusual 12 circumstances determination isn't about searching 13 or collecting records. It's about whether or not 14 the agency will produce records, right?</p> <p>15 A I don't think that's accurate, no.</p> <p>16 Q Well, there's -- there's -- there are 17 different parts of the FOIA process. There's the 18 determination at the beginning of whether or not 19 the agency is going to search and collect 20 records, right?</p> <p>21 A So that would happen at the intake 22 stage.</p> <p style="text-align: right;">Page 106</p>	<p>1 that in consultation with the OIP that -- when 2 DEA invokes unusual circumstances.</p> <p>3 I understand you -- you strongly 4 disagree whether that's appropriate under the 5 statute, but I think that we're --</p> <p>6 MR. ZORN: Well, I'm --</p> <p>7 MR. RODRIGUEZ: I don't want -- I don't 8 want you to try to get her to concede a legal 9 point.</p> <p>10 MR. ZORN: I'm not asking a legal 11 question here. I'm trying to use the statute to 12 illustrate what exactly is being deferred when 13 the unusual circumstances is being invoked.</p> <p>14 BY MR. ZORN</p> <p>15 Q And, like, it's the -- it's like a 16 determination on the FOIA request, right? It's 17 not the actual production of records.</p> <p>18 In other words --</p> <p>19 A It's not the actual production. It's 20 simply the fact that I have to go search for 21 those records --</p> <p>22 Q Right.</p> <p style="text-align: right;">Page 108</p>
<p>1 Q Right.</p> <p>2 A We receive a request. The staff has 3 reviewed the request thoroughly, and they 4 determine it's time to conduct a search. So we 5 send a search memo out to whichever office would 6 own the material being requested.</p> <p>7 Q Right.</p> <p>8 A And that's the first process -- the 9 first step.</p> <p>10 Q Right. And -- but -- but -- sorry. 11 I'm cutting you off. That's rude.</p> <p>12 A No, you're fine.</p> <p>13 Q Okay. I just -- I want to go to, like, 14 in the statute what the unusual circumstance 15 is -- and I don't know what if you want to pull 16 the statute up. That was -- it was, what, 17 Exhibit FOIA?</p> <p>18 A Uh-huh.</p> <p>19 MR. RODRIGUEZ: I'm going to object 20 probably that you're asking for a legal 21 conclusion. I think we've established what the 22 DEA's practice is and that she's testified</p> <p style="text-align: right;">Page 107</p>	<p>1 A -- outside of my own office. Once 2 those records are collected, it then moves on to 3 a different unit.</p> <p>4 The processing unit is now reviewing 5 for responsiveness, determining what's 6 releasable, you know, to the requester under the 7 FOIA, placing redactions on records. So that's 8 what that team does.</p> <p>9 But intake is doing the initial -- you 10 know, they're the ones that are invoking unusual 11 circumstances, if that's what you're asking.</p> <p>12 Q Yeah, and -- but I'm saying what -- 13 what is the -- what timeline here is getting 14 extended?</p> <p>15 It's not like -- the agency, whether 16 unusual circumstances apply or not, can frankly 17 take its time reviewing records and producing 18 records. What's being extended when the 19 exception is invoked is the determination on, 20 okay, here's how much you need to pay me to get 21 me to search -- sorry -- to get me to review 22 these records, right?</p> <p style="text-align: right;">Page 109</p>



<p>1 A Only -- only for commercial use --</p> <p>2 Q Right.</p> <p>3 A -- yes, that would be true.</p> <p>4 Q Okay. And --</p> <p>5 A And review fees, yes, are applied.</p> <p>6 Q Right. And it's not -- the unusual</p> <p>7 circumstances is not -- it's not extending the</p> <p>8 time to produce documents. This is the -- what</p> <p>9 the agency's doing, it's extending the time by</p> <p>10 which, you know, the requester gets a letter</p> <p>11 saying, like, we've searched for records, right?</p> <p>12 A So the way the statute reads, it's</p> <p>13 we're extending the ten-day statutory response</p> <p>14 time.</p> <p>15 Q Right.</p> <p>16 A In theory, right, if we're all</p> <p>17 following the statute, I should be producing all</p> <p>18 these records in 30 days.</p> <p>19 The reality in the federal</p> <p>20 government -- and this is across the</p> <p>21 government -- is that we simply do not have</p> <p>22 enough resources to be able to produce documents</p> <p style="text-align: right;">Page 110</p>	<p>1 MR. ZORN: -- want to take a break.</p> <p>2 MR. RODRIGUEZ: Yeah.</p> <p>3 MR. ZORN: All right.</p> <p>4 VIDEO TECHNICIAN: Going off the</p> <p>5 record, the time is 11:39 a.m.</p> <p>6 (Recess 11:39 a.m. to 11:55 a.m.)</p> <p>7 VIDEO TECHNICIAN: Going back on the</p> <p>8 record, the time is 11:55 a.m.</p> <p>9 MR. ZORN: Welcome back, Ms. Miller.</p> <p>10 THE WITNESS: Thank you.</p> <p>11 MR. ZORN: Can we -- if you pull up</p> <p>12 your exhibits, I introduced Exhibit 3, so I guess</p> <p>13 we need to refresh.</p> <p>14 (Deposition Exhibit Number 3</p> <p>15 was marked for identification.)</p> <p>16 MR. RODRIGUEZ: Let me try one more</p> <p>17 time. I'm sorry. Let's go off the record. My</p> <p>18 system has prompted me that my password is due to</p> <p>19 be changed. Sorry about this.</p> <p>20 VIDEO TECHNICIAN: Going off the</p> <p>21 record, the time is 11:56 a.m.</p> <p>22 (Recess 11:56 a.m. to 11:59 a.m.)</p> <p style="text-align: right;">Page 112</p>
<p>1 in 30 days. Many of our requests are considered</p> <p>2 complex, involve hundreds, if not thousands of</p> <p>3 pages.</p> <p>4 So the ability for a very small FOIA</p> <p>5 team to produce all of these requests in 30 days</p> <p>6 is just simply not feasible. We certainly do the</p> <p>7 best that we can, and we set up, like I</p> <p>8 explained, certain types of buckets to try to</p> <p>9 keep eyes on things that are manageable to get</p> <p>10 out the door faster, but, yes, it's a very</p> <p>11 difficult, very challenging process.</p> <p>12 Q It sounds like a statute Congress</p> <p>13 should fix, right?</p> <p>14 A Well, it is -- that or we should get</p> <p>15 more resources somehow.</p> <p>16 MR. ZORN: Have we -- how long have we</p> <p>17 been on?</p> <p>18 VIDEO TECHNICIAN: One hour and 44</p> <p>19 minutes.</p> <p>20 MR. ZORN: Okay. I'm at a breaking</p> <p>21 point. I don't know if you guys --</p> <p>22 THE WITNESS: Okay.</p> <p style="text-align: right;">Page 111</p>	<p>1 VIDEO TECHNICIAN: Going back on the</p> <p>2 record, the time is 11:59 a.m.</p> <p>3 BY MR. ZORN</p> <p>4 Q All right. Ms. Miller, do you have</p> <p>5 Exhibit 3 in front of you?</p> <p>6 A Yes, I do.</p> <p>7 Q And this is a document. It's hard to</p> <p>8 see because of the sticker, but if you look at</p> <p>9 the very bottom, do you see the number DEA --</p> <p>10 maybe if you just look at the second page of the</p> <p>11 document, you'll see DEA, and then there are one,</p> <p>12 two, three, four, five, five leading zeros and</p> <p>13 then a two. Do you see that?</p> <p>14 A I do.</p> <p>15 Q Do you recognize that as a Bates</p> <p>16 number?</p> <p>17 A Yes.</p> <p>18 Q Okay. And this is a document that --</p> <p>19 that DEA has produced in advance of this</p> <p>20 deposition. True?</p> <p>21 A True.</p> <p>22 Q What is this document?</p> <p style="text-align: right;">Page 113</p>

<p>1 A This is the DEA's FOIA and Privacy Act 2 policy, internal policy. 3 Q So this is -- this is an internal 4 policy of DEA, true? 5 A Yes. 6 Q Okay. And at the top of the first 7 page, it says: This document and its contents 8 are the property of the Drug Enforcement 9 Administration and may not be disseminated 10 outside DEA (or if loaned outside of DEA, further 11 disseminated) without the express written 12 permission of the Office of Chief FOIA counsel. 13 Did I read that correctly? 14 A My -- the last little bit there, Office 15 of Chief Counsel, yes. Yeah. 16 Q And so what's -- what's the purpose 17 of -- well, let me take a step back. 18 Is this the complete document, or is 19 this a chapter in a larger document? 20 A This is a policy that can be found in 21 our administrative manual. So it's a -- it's a 22 subsection, if you will, of the admin manual.</p> <p style="text-align: right;">Page 114</p>	<p>1 A Yes. 2 Q Do you know where this document is 3 published? 4 A When? 5 Q Where? 6 A Oh, where. I'm sorry. This is 7 published in the administrative manual, which is 8 accessible to all agency staff. 9 Q Okay. Is it accessible to the public? 10 A It is not. 11 Q Okay. And you're familiar with the 12 FOIA statute, aren't you? 13 A Yes. 14 Q Should this be accessible to the 15 public? 16 A It should be, and it is definitely part 17 of our list of priorities and things that we 18 would like to get published. 19 Due to the lack of resources I have 20 right now and our primary focus being just able 21 to fulfill FOIA requests, we've had struggle 22 getting policies and other things posted, but it</p> <p style="text-align: right;">Page 116</p>
<p>1 Q Okay. And have you read that admin 2 manual before? 3 A Yes. 4 Q Okay. And is this header across the 5 entire manual? 6 A It's across all manuals -- 7 Q Okay. 8 A -- in DEA. 9 Q Okay. And are those manuals that 10 instruct staff members on how to carry out their 11 jobs and duties? 12 A That is correct. 13 Q Okay. And you would agree that this 14 portion of the manual relates to FOIA requests 15 and processing of FOIA requests, correct? 16 A That is correct. 17 Q And, inherently, a FOIA request is 18 responding to a request made by a member of the 19 public, true? 20 A True. 21 Q And so responding to FOIA requests 22 affect the public, right?</p> <p style="text-align: right;">Page 115</p>	<p>1 is definitely a goal of ours. 2 Q Okay. So disseminating this particular 3 chapter outside of DEA shouldn't raise any agency 4 concerns, right? 5 A In my opinion, it should not. 6 Q Okay. Because it's not a confidential 7 document because the FOIA presumably makes it 8 public, right? 9 A If this were to be requested by the 10 public, we would produce it. Second to that, 11 like I mentioned, my goal would be to eventually 12 publish this and other administrative policies 13 online. 14 Q And that would be a simple request now. 15 Because of my litigation, it's in the FOIAXpress 16 database, right? 17 A Are you saying if I were to get a 18 request for this right now, I would consider it 19 simple? 20 Q Yes. 21 A So how we define simple and complex, 22 again, right --</p> <p style="text-align: right;">Page 117</p>

<p>1 Q Sorry. Yeah.</p> <p>2 A Yeah. Now, if I had a full staff right</p> <p>3 now, like, my goal would be to get this out in a</p> <p>4 day, right? In theory, that's what we should be</p> <p>5 doing. I need staff to be able to do it.</p> <p>6 Q No unusual circumstances here, though,</p> <p>7 right?</p> <p>8 A No, because we own this record, so -- I</p> <p>9 actually wrote this -- this policy.</p> <p>10 Q Okay. So -- and when did you write the</p> <p>11 policy?</p> <p>12 A So this policy was completely rewritten</p> <p>13 in 2019. I believe this got published in 2020.</p> <p>14 Q Okay. And let's -- looking at the</p> <p>15 content of this, can we turn to the Bates ending</p> <p>16 in 10? Can we look at the D, "Statutory Time</p> <p>17 Limits"?</p> <p>18 A D, yes.</p> <p>19 Q And I just want to confirm. This is</p> <p>20 DEA's -- this is, in fact, a policy?</p> <p>21 A This is an internal agency policy.</p> <p>22 Q Okay. And under 1, it says, "FSR."</p> <p style="text-align: right;">Page 118</p>	<p>1 A It is not necessarily the production of</p> <p>2 records. It has to do with -- again, I have to</p> <p>3 search outside of my own office to locate those</p> <p>4 records, and as such, I'm invoking the extra ten</p> <p>5 days, you know, so, essentially, I'm expanding</p> <p>6 the statutory response time.</p> <p>7 Q And, you know, I'm not trying to beat a</p> <p>8 dead horse here, but just because this is the</p> <p>9 written policy --</p> <p>10 A Sure.</p> <p>11 Q -- here, we have -- unusual</p> <p>12 circumstances are defined as -- and focusing on</p> <p>13 "a" -- "The need to search for records from the</p> <p>14 field offices," that's the first part in the</p> <p>15 statute relating to field offices, fair?</p> <p>16 A Uh-huh. Yes.</p> <p>17 Q And then the second part is truncated</p> <p>18 into the words "other locations," right?</p> <p>19 A (Nodding.)</p> <p>20 Q And so --</p> <p>21 A Yes.</p> <p>22 Q -- just to summarize in a nutshell,</p> <p style="text-align: right;">Page 120</p>
<p>1 What does that stand for?</p> <p>2 A So this was our old acronym for our</p> <p>3 office. It used to be part of the Office of</p> <p>4 Administration. The acronym was FS. Our</p> <p>5 specific acronym was FSR.</p> <p>6 Q Okay. And that stands for?</p> <p>7 A FSR stood for the Freedom of</p> <p>8 Information and Records Management Section.</p> <p>9 Q Okay. And so that section has 20</p> <p>10 business days to respond to a FOIA/PA -- PA being</p> <p>11 Privacy Act, correct?</p> <p>12 A Yes.</p> <p>13 Q -- request unless the request falls</p> <p>14 within unusual circumstances.</p> <p>15 And we'll get to the remainder in a</p> <p>16 moment, but just pausing here, again, this is</p> <p>17 what we were discussing before about the unusual</p> <p>18 circumstances exception or provision applies to</p> <p>19 responding to a request, true?</p> <p>20 A It does.</p> <p>21 Q Okay. It's not necessarily a</p> <p>22 production of records?</p> <p style="text-align: right;">Page 119</p>	<p>1 DEA's view of the statute is that the</p> <p>2 establishment separate from the office processing</p> <p>3 the request is "other locations," fair?</p> <p>4 A Correct.</p> <p>5 Q And that's the view of the entire</p> <p>6 Department of Justice, in fact?</p> <p>7 A No. That's the view of the entire DEA.</p> <p>8 Q Okay.</p> <p>9 A So all of DEA, whether it's the 239</p> <p>10 field offices, the 90 offices in the foreign</p> <p>11 countries, the 150-plus headquarters components.</p> <p>12 Q I'm just talking about the -- this</p> <p>13 policy about what unusual circumstances means is</p> <p>14 not a localized policy to -- this is the DEA</p> <p>15 policy manual, but this policy we're discussing</p> <p>16 is -- the entire Department of Justice subscribes</p> <p>17 to this view?</p> <p>18 A This -- yes, because this is in the</p> <p>19 statute.</p> <p>20 Q Okay. And have you ever discussed this</p> <p>21 policy with anyone at the Department of Justice?</p> <p>22 A The unusual circumstances policy or --</p> <p style="text-align: right;">Page 121</p>

<p>1 Q And let me qualify this by -- like if 2 you discussed with, like, an attorney, I don't 3 want to run into privilege issues. I'm really 4 more talking about, like, chief FOIA officer 5 counsel type discussions. So --</p> <p>6 A Yes.</p> <p>7 Q -- like, has this ever been discussed 8 in, like, meetings sort of at DOJ?</p> <p>9 A If you're talking about the definition 10 of unusual circumstances, yes, I have discussed 11 this with an attorney at OIP.</p> <p>12 Q And I don't -- I can't ask you about 13 the contents of those discussions, so I won't, 14 but you have -- this has been discussed?</p> <p>15 A It has been discussed.</p> <p>16 Q Was it -- and now I'm just asking when. 17 Was it discussed before or after I filed this 18 lawsuit?</p> <p>19 A After.</p> <p>20 Q Okay. And so you have been in touch 21 with OIP since I filed this lawsuit?</p> <p>22 A Yes, I have.</p> <p style="text-align: right;">Page 122</p>	<p>1 A Yes. Their interpretation is the same 2 as mine.</p> <p>3 Q Okay. Let's move on to something else.</p> <p>4 MR. RODRIGUEZ: And to be clear so -- I 5 think it will head off maybe any future issue. 6 It was a communication with an attorney at OIP, 7 and so we would consider the details of the 8 communication to be privileged. I just didn't 9 want you to turn around and ask me like, where is 10 that? It exists.</p> <p>11 MR. ZORN: Yeah.</p> <p>12 MR. RODRIGUEZ: It was via e-mail, or 13 at least I've seen an e-mail.</p> <p>14 MR. ZORN: I think it's -- I think it's 15 privileged, so I'm not --</p> <p>16 MR. RODRIGUEZ: Okay.</p> <p>17 MR. ZORN: From what I've heard, it 18 sounds --</p> <p>19 MR. RODRIGUEZ: Yeah. There's no 20 issue.</p> <p>21 MR. ZORN: -- sounds privileged, and 22 I'm not -- I'm not going to go into the contents</p> <p style="text-align: right;">Page 124</p>
<p>1 Q Okay. And so OIP is aware of this 2 lawsuit?</p> <p>3 A I have informed them that -- I'm trying 4 to remember how the conversation started.</p> <p>5 I was -- I went to them to get clarity 6 on the definition of unusual circumstances. I 7 wanted to make sure that our interpretation was 8 the department's interpretation. So that was 9 the -- so I reached out to them, obviously, after 10 the lawsuit was filed to get clarification on 11 this.</p> <p>12 Q Oh, so, I mean, you're here 13 representing the Department of Justice, and the 14 Office of Information Policy has confirmed that 15 this is the Department of Justice --</p> <p>16 A Yes.</p> <p>17 Q -- policy?</p> <p>18 And by "this," I mean the 19 interpretation --</p> <p>20 A The --</p> <p>21 Q -- we've been discussing of unusual 22 circumstances.</p> <p style="text-align: right;">Page 123</p>	<p>1 of it. There might be some argument under FOIA 2 that it isn't, but I'm not -- I'm not going to go 3 there.</p> <p>4 BY MR. ZORN</p> <p>5 Q Okay. Why don't -- why don't we talk a 6 little bit about fees. I'm interested in how 7 fees are calculated.</p> <p>8 So I'll start with that, which is just 9 an open ended: How are fees calculated?</p> <p>10 A We, like I mentioned earlier, do not 11 charge search fees any longer. It's very rare 12 for us to charge search fees due to the statutory 13 time limits.</p> <p>14 Review fees, however, are charged only 15 to commercial use requesters. So when we receive 16 a request and we've determined that it is, in 17 fact, commercial use, we will continue to -- we 18 will do the search, collect the records.</p> <p>19 Once the records come back, we -- the 20 staff has a little calculation that we file to 21 determine how long the review time is going to 22 take, you know, what the labor hours are going to</p> <p style="text-align: right;">Page 125</p>

<p>1 be, and then we follow the fee provision that's</p> <p>2 in the DOJ FOIA regulations, which says that we</p> <p>3 charge \$40 per hour.</p> <p>4 MR. ZORN: Okay. And so I've</p> <p>5 introduced an exhibit. It's annotated, and</p> <p>6 it's -- it should be in the folder as 10A.</p> <p>7 THE WITNESS: Okay.</p> <p>8 MR. ZORN: And we can pull this up.</p> <p>9 (Deposition Exhibit Number 10A</p> <p>10 was marked for identification.)</p> <p>11 BY MR. ZORN</p> <p>12 Q When you have this up, just let me</p> <p>13 know.</p> <p>14 A Yes, I do.</p> <p>15 Q So this is -- and there's highlighting</p> <p>16 on the page, and I just want to be clear for the</p> <p>17 record. It wasn't produced to me with the</p> <p>18 highlighting. That's highlighting I've done to</p> <p>19 help us sort of be clear on the questioning.</p> <p>20 But at the top, it's "22-00585-F</p> <p>21 Request Notes."</p> <p>22 Is that -- did I read that correctly?</p> <p style="text-align: right;">Page 126</p>	<p>1 how we're calculating review fees, because I had</p> <p>2 noticed some variability between teams in how the</p> <p>3 staff and supervisors were calculating what they</p> <p>4 believed, you know, in good faith, was -- how</p> <p>5 long it was going to take them to complete a</p> <p>6 review. So I wanted to standardize this.</p> <p>7 So we drafted an SOP, and I had several</p> <p>8 meetings with the unit chiefs to sit down -- we</p> <p>9 sat down in a room and worked together in</p> <p>10 determining how long on average does it take you</p> <p>11 to review a page, place redactions on a page, and</p> <p>12 we came up with seven minutes on average.</p> <p>13 Q And what's an SOP?</p> <p>14 A I'm sorry. Standard operating</p> <p>15 procedures.</p> <p>16 Q Okay.</p> <p>17 A So we wanted to put a guidance document</p> <p>18 together for the office in an effort to</p> <p>19 standardize this process and be more transparent</p> <p>20 and be consistent in how we're calculating review</p> <p>21 fees.</p> <p>22 Q And -- and is that -- was that</p> <p style="text-align: right;">Page 128</p>
<p>1 A Yes.</p> <p>2 Q And is it a fair characterization to</p> <p>3 say that these are internal DEA request notes</p> <p>4 from a request that I filed?</p> <p>5 A Correct.</p> <p>6 Q Okay. And looking at the first page,</p> <p>7 I've highlighted that there's 2,190 pages of</p> <p>8 potentially responsive records.</p> <p>9 Did I --</p> <p>10 A Correct.</p> <p>11 Q Okay. And then -- and this isn't</p> <p>12 highlighted, but it's on the next line -- seven</p> <p>13 minutes per page for review.</p> <p>14 Is that the standard agency seven</p> <p>15 minutes per page?</p> <p>16 A That is what our office has -- uses,</p> <p>17 yes, for the determination of the review time.</p> <p>18 Q Where did that number come from?</p> <p>19 A So that number came from a series of --</p> <p>20 let me back up.</p> <p>21 During 20- -- early 2022, I determined</p> <p>22 there was a need to standardize this process in</p> <p style="text-align: right;">Page 127</p>	<p>1 produced --</p> <p>2 A Yes.</p> <p>3 Q -- the SOP?</p> <p>4 A It was.</p> <p>5 Q Okay. Was it titled standard</p> <p>6 operating -- did I miss it?</p> <p>7 A It was, and it was titled "Calculating</p> <p>8 of Review Fees."</p> <p>9 Q Okay. So the seven minutes comes from</p> <p>10 just -- was there any, like -- who -- was it --</p> <p>11 how was seven minutes arrived at? Just a guess</p> <p>12 of what the average time was?</p> <p>13 A It was myself and three other managers,</p> <p>14 yes, that sat together and talked through this</p> <p>15 SOP, and we came up with, on average, that we</p> <p>16 believe it takes us about seven minutes to</p> <p>17 process a page, meaning I'm reviewing a page, I'm</p> <p>18 using a tool to place redactions, place codes on</p> <p>19 the document. It's about seven minutes per page.</p> <p>20 Q Okay. And then -- and you're not --</p> <p>21 so -- so the estimate's not based on what -- how</p> <p>22 long it would take to actually read a page. It's</p> <p style="text-align: right;">Page 129</p>

<p>1 just --</p> <p>2 A Oh, it's reading as well, yeah. I'm</p> <p>3 reading the page, and I'm placing redactions on</p> <p>4 protected information and asserting the exemption</p> <p>5 code, placing the exemption code on the document.</p> <p>6 That's all part of the --</p> <p>7 Q And so I'm still kind of at a loss. So</p> <p>8 how -- you guys just agreed on seven minutes? I</p> <p>9 don't --</p> <p>10 A Yes.</p> <p>11 Q Was there any -- did you kind of like</p> <p>12 do any experiments or --</p> <p>13 A We did not do an experiment, per se,</p> <p>14 no. This was a conversation over several</p> <p>15 meetings, you know, in putting this SOP together,</p> <p>16 and just from our -- our experience and years of</p> <p>17 practice in this area, we came up with the seven</p> <p>18 minutes.</p> <p>19 Q Because the difference between seven</p> <p>20 minutes and six minutes is a lot -- it's a lot of</p> <p>21 money when you multiply it by a lot of pages.</p> <p>22 A And, again, that's why, you know, it is</p> <p style="text-align: right;">Page 130</p>	<p>1 A Correct.</p> <p>2 Q Why are there two levels of review?</p> <p>3 A So our subordinate staff does the</p> <p>4 majority of the processing. We have to -- it has</p> <p>5 to be reviewed by a manager before we can</p> <p>6 authorize release to the public, right?</p> <p>7 Oftentimes, the managers, when they're</p> <p>8 doing final review, myself included, are making</p> <p>9 slight adjustments to those records. Obviously,</p> <p>10 if it's a lot of adjustments, it's going back to</p> <p>11 the processor to finalize.</p> <p>12 But, generally, a manager is tweaking</p> <p>13 redactions, making sure that this has been</p> <p>14 properly processed, that the redaction codes are</p> <p>15 proper. If -- if something was incorrectly</p> <p>16 redacted, we're lifting redactions. So the</p> <p>17 manager is doing review work and also sometimes</p> <p>18 minor corrections.</p> <p>19 Q And why is the manager 20 percent?</p> <p>20 A Because we're not doing the full</p> <p>21 processing that the subordinate staff is doing,</p> <p>22 right? We're not going -- we're not placing</p> <p style="text-align: right;">Page 132</p>
<p>1 an estimate. You know, this -- this fee, it's an</p> <p>2 estimate. So we estimate that it takes, on</p> <p>3 average, seven minutes.</p> <p>4 Q And three -- so three people came up</p> <p>5 with this?</p> <p>6 A I think four of us. There were --</p> <p>7 Q Four.</p> <p>8 A -- four of us.</p> <p>9 Q Okay. And so there are multiple layers</p> <p>10 of review as well, true?</p> <p>11 A Generally, it's two. So it would be</p> <p>12 the individual in our office that we assign to</p> <p>13 process the case. Then when that individual is</p> <p>14 finished with the case, it moves up to a manager</p> <p>15 for review.</p> <p>16 So we are assessing the review fee for</p> <p>17 both the professional administrative staff's time</p> <p>18 and the supervisor time.</p> <p>19 Q Okay. And -- and looking at the</p> <p>20 document here, the management review time is</p> <p>21 estimated to be 20 percent less than the -- than</p> <p>22 the initial reviewer's time; is that fair?</p> <p style="text-align: right;">Page 131</p>	<p>1 redactions on the entire document. That's</p> <p>2 already been done.</p> <p>3 When it gets to our level, we're just</p> <p>4 going through the document, reading every page,</p> <p>5 making sure that the redactions are correct, and</p> <p>6 making adjustments if need be.</p> <p>7 Q If a manager has to review everything,</p> <p>8 why even have the initial review?</p> <p>9 A Because we would then have to place all</p> <p>10 the redactions, all the exemption codes. It is a</p> <p>11 lot of work. So we have subordinate staff to do</p> <p>12 that initial processing for us. We're just final</p> <p>13 review. We're just making sure that it's been</p> <p>14 properly redacted and it's ready for release to</p> <p>15 the public.</p> <p>16 Q But you're charging for -- the agency</p> <p>17 charges \$40 per hour of -- of both the initial</p> <p>18 review and the manager review?</p> <p>19 A That is correct.</p> <p>20 Q And the purpose of the initial review</p> <p>21 is to save that 20 percent that's going to happen</p> <p>22 with the manager review; is that fair?</p> <p style="text-align: right;">Page 133</p>



<p>1 A I don't know if I understood the last 2 part of the question. I'm sorry.</p> <p>3 Q You're saying the reason that the 4 manager review time is estimated to be 20 percent 5 less is because the manager doesn't have to go 6 through and apply all the redactions; is that 7 right?</p> <p>8 A That is correct.</p> <p>9 Q And the reason there are two levels of 10 review is so that the manager doesn't have to do 11 all of those redactions, right?</p> <p>12 A That isn't necessarily why there's two 13 levels of review. The first level is really the 14 processing.</p> <p>15 The second-level review is I'm ensuring 16 that this is ready for release to the publish. 17 If it's a high profile topic or something, maybe, 18 you know, a litigation matter, it may even be 19 reviewed by a third individual. Maybe an 20 attorney would have to review it.</p> <p>21 But, generally, this is the process for 22 the regular run-of-the-mill FOIA cases. It's one</p> <p style="text-align: right;">Page 134</p>	<p>1 Q Fair?</p> <p>2 A Yes.</p> <p>3 Q But the purpose of the -- so is the 4 purpose of having an initial review to save that 5 time that otherwise the manager would have to -- 6 to do? I mean, do you get where I'm going with 7 this?</p> <p>8 A Yeah. The management team would not be 9 able to -- we have four managers, including 10 myself. We would not be able to process all the 11 requests that come to DEA, right? We have staff 12 to do that work.</p> <p>13 Q Right.</p> <p>14 A We are the final review layer, if you 15 will. We're making sure the record is proper, 16 properly redacted, and is ready for release to 17 the requester.</p> <p>18 So there has to be a QC in place, 19 right? And that's what the manager's job is.</p> <p>20 Q But you're -- but for this QC, then, 21 it's 80 -- you're charging 80 percent of what the 22 initial review time is for -- and -- fair?</p> <p style="text-align: right;">Page 136</p>
<p>1 individual. A subordinate staff member is doing 2 all the processing. We do the final review.</p> <p>3 Q Well, there's at least two levels of 4 review in every FOIA case.</p> <p>5 A Every case.</p> <p>6 Q Right. And, again, the manager is 7 reviewing everything line by line just like the 8 initial reviewer, fair?</p> <p>9 A Yes.</p> <p>10 Q And the only real difference between 11 the two is the manager is not applying the 12 initial set of redactions and processing --</p> <p>13 A Correct.</p> <p>14 Q -- right?</p> <p>15 And that's the theory behind why 16 manager review time is 20 percent less, fair?</p> <p>17 A Yes.</p> <p>18 Q And if we were to calculate that out in 19 dollars, that means that, you know, manager time 20 is, I guess, what, 80 -- 80 percent of the 21 initial bill.</p> <p>22 A Uh-huh.</p> <p style="text-align: right;">Page 135</p>	<p>1 A Uh-huh. Yes.</p> <p>2 Q So, effectively, a request comes in, 3 and a reviewer -- for every five hours that an 4 initial reviewer spends, the manager's going to 5 end up spending four hours doing QC, right?</p> <p>6 A Yes. And the reality of this line of 7 work is that it is a line-by-line review. There 8 is no tool that the government has that's going 9 to tell me that I have effectively redacted all 10 of the things that are protected.</p> <p>11 So we have two people involved in the 12 process, the initial processor that does really 13 the bulk of the work, and then the manager has to 14 do the final review.</p> <p>15 Q Well, why not just -- why can't the 16 manager just -- rather than have five hours of 17 initial review and four hours of -- of QC, why 18 not just have the manager do five hours of review 19 and then not -- not have the initial review? 20 Doesn't that get you to the same place?</p> <p>21 A So I don't know if we're -- let me make 22 sure I understand. So maybe this isn't coming --</p> <p style="text-align: right;">Page 137</p>



<p>1 this part is not very clear.</p> <p>2 So let's say I receive 500 pages of</p> <p>3 records today.</p> <p>4 Q Yeah.</p> <p>5 A It's going to a subordinate staff</p> <p>6 member to do the full review and redaction</p> <p>7 process.</p> <p>8 And then let's say it takes this person</p> <p>9 a month to do the 500 pages, right? It now is</p> <p>10 getting pushed up to the unit chief or myself.</p> <p>11 This case is ready to go. You know, the</p> <p>12 manager's reviewing all of the documents to make</p> <p>13 sure that it is ready for release. If it is, I</p> <p>14 sign a cover letter, and we release it.</p> <p>15 Q No, I'm following this precisely, and</p> <p>16 that's what I'm saying is, if you didn't have the</p> <p>17 initial review -- let's say that didn't exist --</p> <p>18 A Yes.</p> <p>19 Q -- then the manager's doing all of that</p> <p>20 work --</p> <p>21 A All of that work.</p> <p>22 Q -- right?</p> <p style="text-align: right;">Page 138</p>	<p>1 time to do the initial review. Is that fair?</p> <p>2 A Yes.</p> <p>3 Q And then you don't need the initial</p> <p>4 review, correct?</p> <p>5 A You wouldn't, but the management team</p> <p>6 would not be able to do any work in the lanes of</p> <p>7 leading change, leading people and doing final</p> <p>8 review of all these cases, because now we would</p> <p>9 become a government information specialist and be</p> <p>10 processing cases day in, day out. So that's why</p> <p>11 I'm having a little trouble following this.</p> <p>12 Like, we have subordinates that do the bulk of</p> <p>13 the work, right?</p> <p>14 We are the -- we are the QC. We're</p> <p>15 making sure everything is correct. We have to go</p> <p>16 page by page to review everything. If there's a</p> <p>17 mistake or something needs to be fixed, we're</p> <p>18 reconciling all of this before it gets released</p> <p>19 to the public.</p> <p>20 Q Well, why not just replace some of the</p> <p>21 initial review team with just managers and -- I</p> <p>22 mean, the managers --</p> <p style="text-align: right;">Page 140</p>
<p>1 A Yeah.</p> <p>2 Q And since -- but it's only going to</p> <p>3 take the manager 20 percent more time to do that</p> <p>4 work according to the way DEA --</p> <p>5 A Less.</p> <p>6 Q Sorry. It takes -- it takes the</p> <p>7 manager review time 20 percent less when the</p> <p>8 manager's doing QC?</p> <p>9 A Uh-huh.</p> <p>10 Q But let's say the manager is the</p> <p>11 initial and final level of review, fair? So then</p> <p>12 it's just 100 percent of the time.</p> <p>13 Do you follow me?</p> <p>14 A Not exactly, no. I'm sorry.</p> <p>15 Q Well, you're saying the job of doing QC</p> <p>16 is essentially 80 percent of the hours it takes</p> <p>17 to do an initial review. Is that --</p> <p>18 A Yes.</p> <p>19 Q -- accurate?</p> <p>20 A Yeah.</p> <p>21 Q If the manager were to undertake the</p> <p>22 initial review, it would be 100 percent of the</p> <p style="text-align: right;">Page 139</p>	<p>1 A So the manager's job is not to do FOIA</p> <p>2 processing work. That's not the manager's job.</p> <p>3 Q I agree. I'm just trying to grasp why</p> <p>4 it is that a manager is re-reviewing all of the</p> <p>5 documents line by line, doing effectively the</p> <p>6 same task of the initial reviewer, but,</p> <p>7 effectively, the only difference is the actual,</p> <p>8 like -- like, redaction, like processing; is --</p> <p>9 A Well, the --</p> <p>10 Q -- that right?</p> <p>11 A -- other -- yes. And the other thing I</p> <p>12 haven't mentioned is that, you know, we deal with</p> <p>13 some highly sensitive records at DEA. I cannot</p> <p>14 rely on a GS-9 or 11 or 12 to just -- you handle</p> <p>15 the case and let me know when you're done and</p> <p>16 we're going to release it. That's just not how</p> <p>17 it works.</p> <p>18 We have to make sure that DEA's</p> <p>19 equities have been properly protected if we</p> <p>20 are -- you know, if there's information that</p> <p>21 is -- that we are to protect under the FOIA,</p> <p>22 right? So it -- all of the work requires a</p> <p style="text-align: right;">Page 141</p>

<p>1 higher level of review before it's released to 2 the public.</p> <p>3 Q And I hear you, but do you need to 4 review a document page by page and line by 5 line to know that it might have -- in other 6 words, would -- strike that. That's not really a 7 question.</p> <p>8 The process we're looking at here in 9 Exhibit 10A is applied to every document that is 10 requested and reviewed regardless -- just every 11 document, this is -- this is the baseline level 12 of review, true?</p> <p>13 A It is. I just want to make sure we're 14 not combining fees and this. This is the -- this 15 is the general process for all FOIA requests. We 16 have a subordinate staff member process. We have 17 a manager review and authorize release, yes.</p> <p>18 Q So one of my other requests -- and 19 maybe we'll make the deposition shorter and we 20 don't get to it, but -- but recall that one of my 21 requests at issue in this case is all marijuana 22 rescheduling petitions.</p> <p style="text-align: right;">Page 142</p>	<p>1 A So I -- again, I haven't gone through 2 the documents, you know, line by line yet, but 3 I've been advised that we are getting close to 4 making a release to you on this particular case. 5 But I was told that there are third-party names 6 contained in the documents.</p> <p>7 I personally have not reviewed them 8 yet, but if that -- if that is true, we most 9 likely would release -- I'm sorry -- redact those 10 names from the document.</p> <p>11 Q Under what exemption?</p> <p>12 A B6.</p> <p>13 Q Which -- what is B6?</p> <p>14 A This is -- this protects personal 15 privacy.</p> <p>16 Q But it's a public rulemaking petition, 17 isn't it? I'm not trying --</p> <p>18 A So, again --</p> <p>19 Q -- to get argumentative --</p> <p>20 A -- I don't --</p> <p>21 Q -- but --</p> <p>22 A Because I haven't reviewed the</p> <p style="text-align: right;">Page 144</p>
<p>1 On its face, you would agree that 2 doesn't raise any sensitive information, right?</p> <p>3 A It shouldn't, but if there are 4 third-party names contained within those records, 5 that would be redacted.</p> <p>6 I'm actually very familiar with this 7 particular request that you filed, and that 8 request, we -- again, looking at this and fees, 9 we are -- we are most likely not going to charge 10 you fees for that request because the 11 threshold -- we're not going to meet the 12 threshold. If it's -- if it doesn't reach \$25, 13 we're not going to charge you fees.</p> <p>14 Q Well, why would the public -- why -- 15 it's a public rulemaking petition, right? Sorry. 16 That --</p> <p>17 A I think --</p> <p>18 Q My question was not very clear. 19 Those three petitions were public 20 rulemaking petitions submitted by other parties?</p> <p>21 A That is what I recall, yes.</p> <p>22 Q Why would any names be redacted?</p> <p style="text-align: right;">Page 143</p>	<p>1 documents yet, I don't want to, you know, say 2 whether we will or will not. I think I need 3 to -- we need to review it for final, but --</p> <p>4 Q Okay. So -- and I would argue, 5 frankly, the reason I requested those, I need 6 those names, but -- but set that aside for a 7 moment.</p> <p>8 My broader concern here and the real 9 reason I'm asking about this is: It doesn't seem 10 like a public rulemaking petition would have 11 sensitive information, no?</p> <p>12 MR. RODRIGUEZ: Objection. 13 Argumentative.</p> <p>14 You can try to answer.</p> <p>15 THE WITNESS: What I would say is, 16 because I have not had the opportunity to review 17 those documents yet, I wouldn't feel comfortable 18 answering that question.</p> <p>19 If -- if this document is publicly 20 available, we would not redact anything in the 21 document. We would simply release it to you. 22 But I am not aware right now whether that</p> <p style="text-align: right;">Page 145</p>

<p>1 document or those documents have been made</p> <p>2 publicly available already.</p> <p>3 BY MR. ZORN</p> <p>4 Q They haven't. That's why I requested</p> <p>5 them.</p> <p>6 A Okay.</p> <p>7 Q But -- but the point I'm trying to get</p> <p>8 at here is, that request goes through this --</p> <p>9 this double-layer review process, true?</p> <p>10 A It does, but in this case, because my</p> <p>11 recollection is it doesn't involve a high number</p> <p>12 of pages, I had my unit chief complete the</p> <p>13 review. There's not going to be a secondary</p> <p>14 review.</p> <p>15 If I've had a senior-level person</p> <p>16 review it, I'm comfortable with that, and I'm</p> <p>17 likely going to just release it. I'm not going</p> <p>18 to do a secondary review.</p> <p>19 Q Okay.</p> <p>20 A Nor charge fees. That's what we're</p> <p>21 leaning towards, not charging fees, because it</p> <p>22 doesn't meet the threshold is what I'm told.</p> <p style="text-align: right;">Page 146</p>	<p>1 request that you filed that involves over 5,000</p> <p>2 pages -- we have to go through that to figure out</p> <p>3 what is releasable, right?</p> <p>4 I don't have you know intimate</p> <p>5 knowledge of what documents have been publicly</p> <p>6 filed. That has to be -- we'd have to look at</p> <p>7 that.</p> <p>8 Q But if you asked, for instance,</p> <p>9 Ms. Cotter, like, where did these documents come</p> <p>10 from, and she's like, the parties submitted it,</p> <p>11 why -- why -- at that point, it was submitted --</p> <p>12 you know it was submitted in a public ALJ</p> <p>13 proceeding. It wasn't filed under seal.</p> <p>14 Why -- what -- what is there to review</p> <p>15 as far as exemptions are concerned?</p> <p>16 A I -- again, we were given three boxes</p> <p>17 of records from that office. I don't think that</p> <p>18 everything in those boxes has been publicly</p> <p>19 filed, so we have to do some work on this case.</p> <p>20 Q But -- but the estimates that DEA --</p> <p>21 and that's what this is. Let's start over.</p> <p>22 This is not -- this is an estimate --</p> <p style="text-align: right;">Page 148</p>
<p>1 Q Okay. So -- okay. Well, that --</p> <p>2 that's interesting, and I certainly appreciate</p> <p>3 that, but -- so -- but I guess what I'm really</p> <p>4 trying to get at is, the character of the</p> <p>5 request -- so a request for a document that is</p> <p>6 made public or should be made public or is like a</p> <p>7 filing -- like this review process is going to</p> <p>8 apply even if it was a public document, right?</p> <p>9 A Not if it's a public document.</p> <p>10 Q Well, so, like, the ALJ filing that we</p> <p>11 were talking about earlier, do you recall --</p> <p>12 A Yes.</p> <p>13 Q -- that?</p> <p>14 So you find out that -- that these --</p> <p>15 the records were filed in an ALJ proceeding,</p> <p>16 fair?</p> <p>17 A Uh-huh. Yes.</p> <p>18 Q That needs to be reviewed twice and</p> <p>19 paid for, and the hours are going to be counted</p> <p>20 twice?</p> <p>21 A If we are assessing fees on the</p> <p>22 records -- and, again, I'm thinking of the one</p> <p style="text-align: right;">Page 147</p>	<p>1 this is a calculation of an estimate it would</p> <p>2 take to review all of the documents, and that's</p> <p>3 what we're looking at, Exhibit 10A, so the record</p> <p>4 is clear, right?</p> <p>5 A Yes.</p> <p>6 MR. RODRIGUEZ: Can we go off the</p> <p>7 record?</p> <p>8 MR. ZORN: Yeah. Sure.</p> <p>9 MR. RODRIGUEZ: I just want to make</p> <p>10 sure --</p> <p>11 VIDEO TECHNICIAN: Going off the</p> <p>12 record, the time is 12:31 p.m.</p> <p>13 (Whereupon, at 12:31 p.m., a</p> <p>14 luncheon recess was taken.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 149</p>

<p>1 AFTERNOON SESSION</p> <p>2 (1:42 p.m.)</p> <p>3 VIDEO TECHNICIAN: Going back on the</p> <p>4 record, the time is 13:42 p.m.</p> <p>5 WHEREUPON,</p> <p>6 KELLEIGH MILLER</p> <p>7 was called for continued examination, and having</p> <p>8 been previously duly sworn, was examined and</p> <p>9 testified further as follows:</p> <p>10 EXAMINATION BY COUNSEL FOR PLAINTIFFS</p> <p>11 CONTINUED</p> <p>12 BY MR. ZORN</p> <p>13 Q Welcome back, Ms. Miller.</p> <p>14 A Thank you.</p> <p>15 Q Let's -- let's -- I put two exhibits in</p> <p>16 the exhibit folder. They're Exhibits 15 and 16.</p> <p>17 They're -- one is the spreadsheet that was</p> <p>18 produced, the FY 2021 raw data. It's 15.</p> <p>19 And then 16 is a little Excel</p> <p>20 calculation I did with the worksheet. And if you</p> <p>21 could just download that -- if you could download</p> <p>22 those, because it's going to be easier to look at</p> <p style="text-align: right;">Page 150</p>	<p>1 data. It is submitted to Department of Justice</p> <p>2 every year by all the various agencies.</p> <p>3 Q And how is this created?</p> <p>4 A How is it created?</p> <p>5 Q Yes.</p> <p>6 A This is a template. It starts as a</p> <p>7 template that they send to us, and we have to</p> <p>8 populate the fields. Information is obviously</p> <p>9 derived from our case management system to fill</p> <p>10 this in.</p> <p>11 Q Okay. And so let's walk through the</p> <p>12 different column headers here just so I can</p> <p>13 understand them.</p> <p>14 The first is -- do you see</p> <p>15 "Component/Office"?</p> <p>16 A Yes.</p> <p>17 Q What does that mean?</p> <p>18 A So this is the office with -- or the</p> <p>19 agency within the Department of Justice that</p> <p>20 submitted this data.</p> <p>21 Q Okay. And then the second is "Request</p> <p>22 Number." What is that?</p> <p style="text-align: right;">Page 152</p>
<p>1 the Excel in the native. I think, at least, it</p> <p>2 is.</p> <p>3 (Deposition Exhibits Number 15 and 16</p> <p>4 were marked for identification.)</p> <p>5 THE WITNESS: So download 15 and 16,</p> <p>6 yes?</p> <p>7 MR. ZORN: Yes.</p> <p>8 THE WITNESS: Okay.</p> <p>9 MR. RODRIGUEZ: 15 and 16?</p> <p>10 MR. ZORN: Yes.</p> <p>11 MR. RODRIGUEZ: Okay.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MR. RODRIGUEZ: I think you can just</p> <p>14 click on that.</p> <p>15 BY MR. ZORN</p> <p>16 Q Okay. So why don't we start with 15</p> <p>17 and see if I can just get some foundational</p> <p>18 questions here.</p> <p>19 So do you recognize Exhibit 15?</p> <p>20 A I do.</p> <p>21 Q What is Exhibit 15?</p> <p>22 A This is the annual FOIA report raw</p> <p style="text-align: right;">Page 151</p>	<p>1 A So that is the number that is assigned</p> <p>2 to a particular FOIA request.</p> <p>3 Q And then the next one is, "Is This A</p> <p>4 Consultation?"</p> <p>5 What does that mean?</p> <p>6 A That means has this FOIA -- was this</p> <p>7 FOIA request received from another federal</p> <p>8 agency, meaning -- I can better explain this by</p> <p>9 giving an example.</p> <p>10 So if I receive a document from the FBI</p> <p>11 and I've received it because the document</p> <p>12 contains DEA's equities, that's a consultation.</p> <p>13 Q Okay. Now, the next column here is</p> <p>14 "Days Allowed," right?</p> <p>15 A Yes.</p> <p>16 Q What does that mean?</p> <p>17 A So this means -- whether or not we</p> <p>18 determined that we were going to invoke unusual</p> <p>19 circumstances, that's where you would see 30 in</p> <p>20 that column, or you'll see 20. So this has to do</p> <p>21 with the statutory timelines, whether we're, you</p> <p>22 know, saying that we're going to process in 20 or</p> <p style="text-align: right;">Page 153</p>

<p>1 30 days.</p> <p>2 Q Okay. So -- so if I see 20 -- and, in</p> <p>3 fact, there are requests here that are 20 -- that</p> <p>4 means it would not be an unusual circumstances</p> <p>5 case?</p> <p>6 A Correct.</p> <p>7 Q Okay. And if it's 30, it is an unusual</p> <p>8 circumstance?</p> <p>9 A Yes.</p> <p>10 Q So -- and just -- just so this is clear</p> <p>11 for sort of later -- later discussion, 20 means</p> <p>12 no unusual circumstances; 30 means there are</p> <p>13 unusual circumstances?</p> <p>14 A Correct.</p> <p>15 Q Okay. What is the next column,</p> <p>16 "Exemption 3 Statutes"?</p> <p>17 A So this indicates whether or not any of</p> <p>18 these agencies invoked an exemption 3 statute.</p> <p>19 Exemption 3 basically means that there is another</p> <p>20 federal statute that prohibits -- prohibits us</p> <p>21 from disclosing records.</p> <p>22 Q Okay. So some -- some statute other</p> <p style="text-align: right;">Page 154</p>	<p>1 Q -- so I'm not too worried about it.</p> <p>2 A All right.</p> <p>3 Q I am interested in the "Information</p> <p>4 Withheld" column.</p> <p>5 A Which also appears to be blank. Again,</p> <p>6 I would have to refer to the instruction sheet</p> <p>7 for that column, but it appears blank.</p> <p>8 Q Okay. "Case Citation," do you know</p> <p>9 what that is?</p> <p>10 A No. Again, I'd have to refer to the</p> <p>11 instruction sheet for those blank columns.</p> <p>12 Q Okay. Well, I actually don't think</p> <p>13 most of those are important, so we don't need</p> <p>14 to --</p> <p>15 A Okay.</p> <p>16 Q -- dwell on those.</p> <p>17 This one is, which is "Date Initially</p> <p>18 Received."</p> <p>19 What does that mean?</p> <p>20 A That means the date that the request</p> <p>21 was accepted by the FOIA office.</p> <p>22 Q Okay. And then the "Date Perfected"</p> <p style="text-align: right;">Page 156</p>
<p>1 than FOIA?</p> <p>2 A Correct.</p> <p>3 Q The next column is "Information</p> <p>4 Withheld."</p> <p>5 What does that mean?</p> <p>6 A Where is that?</p> <p>7 Q It's column G.</p> <p>8 A Oh, sorry.</p> <p>9 Q Oh, no, sorry. The next one is column</p> <p>10 F. I made a mistake. And that's other exemption</p> <p>11 3 statutes.</p> <p>12 So there's -- there's one column that's</p> <p>13 exemption 3 statutes and then there's another</p> <p>14 one, which is other exemption 3 statutes.</p> <p>15 A That one -- I apologize -- I am</p> <p>16 forgetting what that means. I have an</p> <p>17 instruction sheet that we follow when we fill</p> <p>18 this in. That looks blank here on the</p> <p>19 spreadsheet.</p> <p>20 Q It's not really important for this</p> <p>21 case --</p> <p>22 A Okay.</p> <p style="text-align: right;">Page 155</p>	<p>1 means?</p> <p>2 A So that will generally be the same date</p> <p>3 if we are able to move forward with the FOIA.</p> <p>4 If there were any discrepancies with</p> <p>5 the FOIA request that required us to communicate</p> <p>6 with the requester and that could take a couple</p> <p>7 of days, that date would be different.</p> <p>8 So that date -- date perfected, if it's</p> <p>9 different than the date in the column I, just</p> <p>10 means that is the date that we deem the request</p> <p>11 was perfected and ready to move forward.</p> <p>12 Q And then the date completed is the</p> <p>13 date --</p> <p>14 A That we closed the case -- released the</p> <p>15 records requester and closed the case.</p> <p>16 Q Okay. And what happens if there's</p> <p>17 no -- like a lot of these entries don't have any</p> <p>18 date completed. It's just date received,</p> <p>19 perfected, and there's no date completed.</p> <p>20 What does that mean?</p> <p>21 A That means that the request is still</p> <p>22 open.</p> <p style="text-align: right;">Page 157</p>

<p>1 Q Okay. So -- and does that always mean</p> <p>2 the request is still open or --</p> <p>3 A To my knowledge, yes, that is what --</p> <p>4 that is the only thing that I'm aware of that</p> <p>5 that would indicate. If it's blank there, it</p> <p>6 means that the agency has not closed the case</p> <p>7 yet. It's still open.</p> <p>8 Q So I'm going to ask you a question,</p> <p>9 which is: Can you go to row 16150?</p> <p>10 A Sorry. Bear with me one moment.</p> <p>11 16150?</p> <p>12 Q Yeah, the Excel row. It's Request No.</p> <p>13 18-00070-PR.</p> <p>14 A Almost there. 16150. 18-0070?</p> <p>15 Q Yes.</p> <p>16 A Okay.</p> <p>17 Q Dash PR.</p> <p>18 A Yeah.</p> <p>19 Q So my first question is: What does</p> <p>20 "PR" mean?</p> <p>21 A "PR" means that this was a Privacy Act</p> <p>22 request, and "R" means it was a referral. So</p> <p style="text-align: right;">Page 158</p>	<p>1 unusual circumstances because we didn't have to</p> <p>2 search for records. They were already provided</p> <p>3 to us by another federal agency.</p> <p>4 Q Okay. So -- so if another federal</p> <p>5 agency provides you the records, then there's no</p> <p>6 unusual circumstances because it's now in the</p> <p>7 FOIA office because some agency just gave you the</p> <p>8 records?</p> <p>9 A That is correct.</p> <p>10 Q And so -- but it's complex because</p> <p>11 there's a lot of volume of --</p> <p>12 A A high volume.</p> <p>13 Q Okay. So -- interesting. That answers</p> <p>14 some of my questions. Let's see.</p> <p>15 Can you look at -- this is 20-00682.</p> <p>16 It's row 17218 on the spreadsheet.</p> <p>17 A One second. 172. What did you say?</p> <p>18 172 --</p> <p>19 Q Yeah. 17218 is the row.</p> <p>20 A I'm sorry. 17218. Here we go.</p> <p>21 Q And it -- it's -- so it took -- this</p> <p>22 is -- it says a duplicate request in the column</p> <p style="text-align: right;">Page 160</p>
<p>1 what that indicates is that we received a request</p> <p>2 from another agency. They -- another --</p> <p>3 basically, another agency received a FOIA request</p> <p>4 that really was for DEA records, so they referred</p> <p>5 it back to our office to handle and we would</p> <p>6 handle that directly with the requester.</p> <p>7 Q Okay. So then what I see here is that</p> <p>8 this is not a consultation. Is that -- that's</p> <p>9 right?</p> <p>10 A Not a consultation.</p> <p>11 Q It's a simple request because it's only</p> <p>12 20 days allowed.</p> <p>13 A Uh-huh.</p> <p>14 Q It was received in April of 2018,</p> <p>15 right?</p> <p>16 A Yes.</p> <p>17 Q And it's still open?</p> <p>18 A And it's still open. It looks like we</p> <p>19 deemed it complex, which probably means it</p> <p>20 involves a high number of pages, a high volume of</p> <p>21 pages.</p> <p>22 We didn't go out -- we didn't invoke</p> <p style="text-align: right;">Page 159</p>	<p>1 N, and so I would assume that what that means is,</p> <p>2 like, there's been -- that this is a duplicate of</p> <p>3 a request that's already been made at some</p> <p>4 point --</p> <p>5 A Yes.</p> <p>6 Q -- before. Okay.</p> <p>7 Like an exact duplicate?</p> <p>8 A Yes.</p> <p>9 Q Okay. And so let's -- I guess let's go</p> <p>10 to the very top of the spreadsheet again, because</p> <p>11 I want to just move, I guess, through just a</p> <p>12 couple --</p> <p>13 A Okay.</p> <p>14 Q -- more of the headers, which is --</p> <p>15 so -- so "Date Completed" is -- what if a request</p> <p>16 is withdrawn? Is that -- then is that noted in</p> <p>17 the -- as completed if it's --</p> <p>18 A It would have a closure date, yes.</p> <p>19 There should be -- there should be a date there.</p> <p>20 Q Okay. And then "Days Tolled" means</p> <p>21 what?</p> <p>22 A This is any time that we have to what</p> <p style="text-align: right;">Page 161</p>



<p>1 we call stop the clock.</p> <p>2 So if a request is not perfected,</p> <p>3 meaning there's an issue with the request and we</p> <p>4 have to go back to requester, we stop the clock</p> <p>5 because we don't want that counting towards</p> <p>6 the -- you know, the statutory deadlines. And</p> <p>7 once, again, we've perfected the request, we --</p> <p>8 we basically turn the clock back on, if you will.</p> <p>9 Q Okay. Then to track, we've discussed</p> <p>10 that?</p> <p>11 A Uh-huh.</p> <p>12 Q And so there are three tracks, right?</p> <p>13 There's -- there's complex, expedited and simple?</p> <p>14 A Correct.</p> <p>15 Q Okay. What is the expedited track?</p> <p>16 A Expedited track is any time a requester</p> <p>17 requests expedited treatment and because they</p> <p>18 feel there is a compelling need for the</p> <p>19 information sought.</p> <p>20 So there is some criteria, obviously,</p> <p>21 that has to be met in order to meet the</p> <p>22 compelling needs standard. One example would be</p> <p style="text-align: right;">Page 162</p>	<p>1 years' worth of FOIA requests ahead of anything</p> <p>2 that gets filed now?</p> <p>3 A I'm sorry. I want to make sure I'm not</p> <p>4 losing track of the question here. So I've moved</p> <p>5 away. I'm at the -- I'm now at the top row.</p> <p>6 Are you asking about a specific --</p> <p>7 Q I'm just --</p> <p>8 A -- entry or no? Just generally --</p> <p>9 Q No, just --</p> <p>10 A -- you're asking --</p> <p>11 Q -- generally. We did look -- we looked</p> <p>12 at an entry, right, that was unfulfilled from</p> <p>13 April of 2018, true?</p> <p>14 A Yes.</p> <p>15 Q And DEA processes FOIA requests on a</p> <p>16 first-in, first-out type basis?</p> <p>17 A Uh-huh.</p> <p>18 Q Fair?</p> <p>19 A Yes.</p> <p>20 Q And that one is still being reviewed,</p> <p>21 presumably, true?</p> <p>22 A The one that we looked at had to do</p> <p style="text-align: right;">Page 164</p>
<p>1 maybe an inmate on death row has asked for</p> <p>2 records on themselves, and, you know, we would</p> <p>3 grant expedited treatment in that scenario.</p> <p>4 Q Okay. And who makes the determination</p> <p>5 to grant expedited treatment?</p> <p>6 A Generally, our intake unit.</p> <p>7 Q Okay. And is -- is a journalist making</p> <p>8 a request for information -- is that given</p> <p>9 expedited treatment?</p> <p>10 A They would -- we would consider the</p> <p>11 request. If they ask for expedited treatment, of</p> <p>12 course, we would consider the request. It's --</p> <p>13 it's incumbent upon the requester to basically</p> <p>14 tell us which standard under expedited treatment</p> <p>15 they feel that they meet.</p> <p>16 Q Okay. And, otherwise, the requests are</p> <p>17 prioritized on a first-in, first-out type basis?</p> <p>18 A Generally, yes.</p> <p>19 Q So we're looking at the spreadsheet.</p> <p>20 We looked at this April 2018 request.</p> <p>21 That is -- that is still being</p> <p>22 processed, so there's -- there's more than four</p> <p style="text-align: right;">Page 163</p>	<p>1 with antitrust, so if -- but if you're asking</p> <p>2 about a DEA request that's from 2018 that's still</p> <p>3 open, I mean, we definitely have some requests</p> <p>4 from 2018, 2019, that are open.</p> <p>5 Q Okay. And so -- so -- well, I'm</p> <p>6 looking -- I'm looking now at the -- I don't know</p> <p>7 if it was antitrust. I mean, 18-00710 is -- I</p> <p>8 have it as a DEA request.</p> <p>9 A Okay. Sorry. We moved away from the</p> <p>10 line that you were asking about. That's why</p> <p>11 we're back at the top now.</p> <p>12 Q Yeah. Sorry.</p> <p>13 A I think it was, what, 17 --</p> <p>14 Q Yeah. If you get to the 116166 area,</p> <p>15 yeah, we have a number of requests from 2018 that</p> <p>16 are -- are empty.</p> <p>17 And I'll -- when you tell me when</p> <p>18 you're there, I'll give you a precise question</p> <p>19 and answer.</p> <p>20 A Could you kindly give me the number</p> <p>21 again?</p> <p>22 Q Sure. It's the Excel row 16167.</p> <p style="text-align: right;">Page 165</p>

<p>1 A Actually, just give me a minute. Just 2 looking for the data. I'm trying to get this not 3 to move so fast. 4 MR. RODRIGUEZ: Yeah. My -- 5 THE WITNESS: It's difficult. 6 MR. RODRIGUEZ: The interface -- 7 THE WITNESS: I'm sorry. 8 MR. RODRIGUEZ: -- is very jumpy on my 9 pad. I don't usually use that. And I brought a 10 mouse -- 11 THE WITNESS: That's okay. 12 MR. RODRIGUEZ: -- but for whatever 13 reason, it's not working. 14 THE WITNESS: 161 -- 15 MR. ZORN: 16167. 16 THE WITNESS: 67. All right. I'm 17 almost there. There we go. All right. 18 BY MR. ZORN 19 Q So this is a DEA request? 20 A Correct. 21 Q It is 18-00710. True? 22 A Yes.</p> <p style="text-align: right;">Page 166</p>	<p>1 these requests in line, right? 2 A Typically, yes. But having said that, 3 I have set up a number of queues in the office to 4 try to flag or keep eyes on things that are 5 simple. 6 So if I have a request from 2018 and 7 it's two pages, we shouldn't have that, right? 8 We want to make sure that we're getting requests 9 out that are simple quicker. And by doing so, 10 we've actually reduced our simple case processing 11 time about 52 percent in the last two years. 12 Complex is definitely far more 13 challenging, and it's because it involves 14 hundreds, sometimes thousands of pages of records 15 to review, and, again, we have a very small team 16 to process this. So we do have a backlog. 17 Q And so anyone who makes -- well, what's 18 the threshold between simple and complex 19 page-wise? 20 A Approximately 20 pages. So we said 21 anything that's 20 pages and less, we dump into 22 one particular queue. That just really helps the</p> <p style="text-align: right;">Page 168</p>
<p>1 Q And it's a FOIA request, dash F? 2 A Yes. 3 Q Okay. And -- and just moving to the 4 right, it's opened May 2018 and perfected that 5 same day, right? 6 A Yes. 7 Q And it's still open, right? 8 A It's still open. 9 Q And with your screen there, you know, 10 looking down the page, you can see there are -- 11 A Yes. 12 Q -- like almost a dozen requests from 13 2018 that are still open. 14 A Correct. 15 Q And they're complex, so the volume is 16 probably more than -- than -- than a simple 17 request? 18 A Right. 19 Q And these are all still open? 20 A Yes. 21 Q And so in the first-in, first-out 22 system, unless a request is expedited, it's after</p> <p style="text-align: right;">Page 167</p>	<p>1 management team keep eyes on those so we can work 2 together to close them faster. 3 Q So -- and are requests ever batched 4 together? 5 So if I make two requests for two 6 documents, will that be treated -- would that be 7 treated -- let's say the documents I request are 8 ten apiece. Do you follow me? 9 A Okay. 10 Q Well, actually, no. 15 apiece. 11 A Okay. 12 Q If I were to batch that together, there 13 would be 30 pages, and that would be complex, 14 right? 15 A So -- but you -- well, you have filed 16 them as two separate requests, and they were -- 17 Q I filed -- 18 A -- 15 pages each, so we would -- when 19 we're done with the processing, we would put 20 those into one of the simple queues I spoke of. 21 That way, again, we're keeping eyes on those, and 22 we're trying to get them out faster to you.</p> <p style="text-align: right;">Page 169</p>

<p>1 Q So -- so split -- so the DEA doesn't, 2 like, batch -- like, doesn't look at a requester 3 and be like, oh, you've divided up documents and, 4 you know -- that encourages requesters to be 5 precise, right?</p> <p>6 A Right. And we look -- we -- you know, 7 we treat each one as an individual request.</p> <p>8 Now, if you submitted a FOIA request 9 that was on the same exact topic, we would then 10 tell you that we're aggregating your requests, so 11 that happens on occasion.</p> <p>12 Q So I have a question about one of the 13 requests, one of the Tucker requests, which is -- 14 it was administratively closed. Who did that?</p> <p>15 A That was done by the intake unit. 16 Uh-huh.</p> <p>17 Q Do we -- do we know why?</p> <p>18 A So the intake unit made an error in 19 closing that. We reopened it. I actually sent 20 her a letter telling her we were reopening that 21 case.</p> <p>22 Q Okay. And processing notes are -- are</p> <p style="text-align: right;">Page 170</p>	<p>1 uses with complex, simple and expedited?</p> <p>2 A The -- well, those definitions are 3 covered in the DOJ FOIA regulations. So you can 4 find it under what they call the multitask 5 processing section of the regulations, and it 6 talks about, you know, how we defined simple and 7 complex, and, yes, the volume and the length of 8 time it's going to take us to process is wrapped 9 into that definition.</p> <p>10 Q But this sort of 20 -- this 20-page 11 threshold or 30 days, is that a -- is that a DEA 12 sort of rule of thumb, or is that like a 13 Department of Justice --</p> <p>14 A No. So the 20-page rule, if you 15 will -- and, again, this is just one of many 16 buckets or queues that we have created. We did 17 that for the -- so for the 20-page cases, I have 18 one particular queue where all of those cases are 19 going to help us to keep eyes on them so we can 20 close them faster.</p> <p>21 I have other buckets -- so while we 22 have this, you know, simple, complex and</p> <p style="text-align: right;">Page 172</p>
<p>1 one of the -- one of the records that the FOIA 2 office itself actually has, right?</p> <p>3 A We do have processing notes, yes.</p> <p>4 Q So the processing notes shouldn't be 5 unusual circumstances?</p> <p>6 A We did not invoke unusual for that one.</p> <p>7 Q I noticed that. And so -- so -- but 8 turning back here, so a complex request is 9 anything more than 20 pages, right?</p> <p>10 A So the way that we define simple and 11 complex is really -- has to do with the volume. 12 So -- I'm sorry. The volume -- volume, but also 13 the length of time it's going to take us to 14 process.</p> <p>15 So by definition, we basically say a 16 complex request is anything that's going to take 17 us longer -- 30 days or longer to process. 18 Simple cases are those cases that generally take 19 us about a month to process.</p> <p>20 Q Okay. Now, you're here on behalf of 21 both DOJ and DEA. And is it -- do you know if 22 this is the same sort of triage system that DOJ</p> <p style="text-align: right;">Page 171</p>	<p>1 expedited, you know, within this, you know, we 2 have the actual queues that we set up, right?</p> <p>3 So, yes, DEA generally handles these 4 cases in a first-in, first-out approach, but 5 having said that, again, I set up specific work 6 queues so that we can identify and, you know, 7 categorize certain types of requests in an effort 8 to get these out the door faster.</p> <p>9 Q And there's a Zorn work queue now, 10 right?</p> <p>11 A Well, I'm -- I can't call it a queue, 12 but I am familiar with all of your requests, and 13 I am working with the team to try to get these 14 things to you.</p> <p>15 Q I noticed there was -- and I will say, 16 you know, I withdrew one of my requests, and 17 there were certain requests that related to a 18 proceeding that by the time my requests were 19 processed no longer existed, so I wasn't 20 interested in it. So I'm not just throwing 21 requests out.</p> <p>22 But I will say that I noticed in the</p> <p style="text-align: right;">Page 173</p>

<p>1 documents that there was a sort of description of</p> <p>2 Zorn request. Is that -- were -- are my requests</p> <p>3 being sort of grouped together by the requester?</p> <p>4 In other words --</p> <p>5 A No.</p> <p>6 Q Okay.</p> <p>7 A I'm not sure what you're speaking of.</p> <p>8 I'd have to see that, but we don't -- you know,</p> <p>9 when I -- I have a case management system, so --</p> <p>10 Q Sure.</p> <p>11 A -- if I go into my system and I type in</p> <p>12 "Matthew Zorn," all the requests that you've</p> <p>13 submitted to DEA would show up on that page for</p> <p>14 me, but we don't categorize individuals --</p> <p>15 Q Right.</p> <p>16 A -- you know.</p> <p>17 Q Now, there are -- there are requester</p> <p>18 categories, though, right, in the -- the</p> <p>19 software? I noticed that.</p> <p>20 A Yes.</p> <p>21 Q And there's commercial. There's</p> <p>22 noncommercial, right?</p> <p style="text-align: right;">Page 174</p>	<p>1 A Okay.</p> <p>2 Q -- that's in front of you. Okay.</p> <p>3 So back to the sort of simple, complex,</p> <p>4 and just so the record here is clear, there's a</p> <p>5 general -- and, you know, subject to what you</p> <p>6 were saying before, if there are sort of more</p> <p>7 finer groupings, but generally speaking, there's</p> <p>8 a simple line, there's a complex line, and</p> <p>9 there's an expedited line.</p> <p>10 A Correct.</p> <p>11 Q Is that fair?</p> <p>12 A Uh-huh.</p> <p>13 Q And then each one is, generally</p> <p>14 speaking, a first-in, first-out basis, subject to</p> <p>15 sort of a little more discretion in terms of</p> <p>16 processing things?</p> <p>17 A Correct.</p> <p>18 Q Okay. Now, let's open up Exhibit 16.</p> <p>19 And I will represent to you that I created</p> <p>20 Exhibit 16 by doing a pivot table of the data</p> <p>21 that was in Exhibit 15 and summing up complex,</p> <p>22 expedited, simple, and that the grand total was</p> <p style="text-align: right;">Page 176</p>
<p>1 A (Nodding.)</p> <p>2 Q There's a lot more than that, though,</p> <p>3 right?</p> <p>4 A So requester categories are basically</p> <p>5 broken down into your media representatives, your</p> <p>6 non-commercial scientific institutions, your</p> <p>7 educational institutions, and then anything</p> <p>8 outside of that is categorized as what we call</p> <p>9 all others.</p> <p>10 Q So there is a document -- let me just</p> <p>11 pull it up. I might need to -- this is the --</p> <p>12 there is -- the FOIAXpress, I guess, manual or</p> <p>13 whatnot, what was produced, and there was a</p> <p>14 screen -- I don't know if it means anything --</p> <p>15 but of listing the types of requesters, right?</p> <p>16 A Yeah. If you have that document, I</p> <p>17 could look at it. I'm not sure what you -- which</p> <p>18 one that is.</p> <p>19 Q I'm not sure this is too important, so</p> <p>20 why don't we not -- not waste everyone's time</p> <p>21 with something I don't think is terribly</p> <p>22 important. Let's get back to the spreadsheet --</p> <p style="text-align: right;">Page 175</p>	<p>1 the total number of requests for each of the</p> <p>2 different divisions or -- sorry -- the different</p> <p>3 components or agencies on the left. And that</p> <p>4 column I there is the percentage of requests that</p> <p>5 were -- that were -- percentage of requests</p> <p>6 categorized as simple.</p> <p>7 So in the case of ATF, for example,</p> <p>8 that 25 percent is because 491 out of 1,936 --</p> <p>9 and it's rounded, but 491 over 1,936, that's</p> <p>10 25 percent of the 1,936 requests that ATF got</p> <p>11 according to my pivot table were categorized as</p> <p>12 simple.</p> <p>13 Do you follow me?</p> <p>14 A Yes.</p> <p>15 Q And do you see here that DEA</p> <p>16 categorized just -- and this is in 20 -- of the</p> <p>17 2021 spreadsheet, just 3 percent of the requests</p> <p>18 as simple?</p> <p>19 A I see that, but I would tell you that I</p> <p>20 worry about the data that is depicted here,</p> <p>21 because the previous chart that we looked at or</p> <p>22 spreadsheet, that is the annual report data for</p> <p style="text-align: right;">Page 177</p>

<p>1 2021, I believe, which includes cases that were 2 received prior to 2021. 3 Q Right. 4 A So we're basically looking at -- I 5 think it goes back to 2018 on that spreadsheet 6 for DEA. It's anything that is basically -- that 7 had remained open during that reporting period, 8 2021. 9 So, like, I think what we're looking at 10 here is all cases that were open as of 2021, and 11 you're saying it's 3 -- only 3 percent of all of 12 that data simple -- it's 3 -- simple cases were 13 just 3 percent of that total number. 14 Q Right. And I'm just looking at the 15 other agencies, and with the exception of -- it 16 does look like here that -- that USMS is -- is 17 zero percent. 18 And then OJP, which is, I think, what, 19 Office of Justice Programs, is 7 percent, but -- 20 but the DEA is -- is -- is a lot lower -- 21 categorizes a lot more requests according to the 22 spreadsheet data than the other components or</p> <p style="text-align: right;">Page 178</p>	<p>1 VIDEO TECHNICIAN: Going off the 2 record, the time is 14:12 p.m. 3 (Recess 2:12 p.m. to 2:23 p.m.) 4 VIDEO TECHNICIAN: Going back on the 5 record, the time is 14:23 p.m. 6 MR. ZORN: All right. Thanks for your 7 patience. I'm introducing Exhibit 17 into the 8 folder. It's another spreadsheet. 9 (Deposition Exhibit Number 17 10 was marked for identification.) 11 BY MR. ZORN 12 Q And if you tell me when you have it 13 open -- 14 A Yes, we have it open. 15 Q So there are two different sheets in 16 this spreadsheet, and I'll represent to you that 17 the first sheet is the document that was produced 18 to me, which is the FY 2022 raw data for DEA. 19 Does this look like -- like that would 20 be -- like that's the raw -- 21 A Yes. 22 Q -- data? Okay.</p> <p style="text-align: right;">Page 180</p>
<p>1 agencies. 2 And maybe I don't understand the -- the 3 data that was produced to me, and I would welcome 4 a clarification, but that seems to be what's 5 showing up here. 6 A Yeah. I think it would be a clearer 7 picture for me -- and this is not how we report 8 as DOJ, right? If I saw per fiscal year of all 9 the requests I received just for, let's say, 10 fiscal year 2022, how many of those -- what was 11 the percentage of simple versus complex? 12 Again, this is not a stat that we're 13 required to track, but this is -- we've lumped 14 in, basically, prior year requests. This is -- 15 anything that remained open during the 2021 16 reporting period is what you've put together 17 here, and I think that the statistics could get a 18 little skewed here potentially. 19 MR. ZORN: Okay. So can we just go off 20 the record quickly? Because we do have the 2022, 21 and I just want to quickly do it, because, you 22 know --</p> <p style="text-align: right;">Page 179</p>	<p>1 Now, there's another sheet there. It 2 says Sheet 1 at the bottom. 3 A Uh-huh. Yes. 4 Q And if you have it open, I'll represent 5 to you, over the break, I created a pivot table 6 of the data to track the -- by different years. 7 Those years correspond to the -- when the request 8 was received. 9 A Okay. 10 Q And the different column labels there, 11 the "C" is for complex, the "E" is for expedited, 12 and the "S" is for simple. 13 Do you follow me? 14 A I do. 15 Q And it looks here like that the -- 16 there are -- 213 out of 1,215 requests were 17 simple. 18 Did I read that off the spreadsheet 19 correctly? 20 A Yes. 21 Q Okay. And so just to give us an idea 22 percentage-wise, that's around 17.5 percent.</p> <p style="text-align: right;">Page 181</p>

<p>1 Does that -- in your experience as the 2 chief FOIA officer, would that -- that be roughly 3 accurate?</p> <p>4 A Again, we don't -- this is not a stat 5 that we track, right, separate from the data you 6 saw in the annual FOIA report. What you've put 7 together here, though, I mean, you've pulled it 8 from that -- you've extracted this data from that 9 raw data sheet. This appears to be correct.</p> <p>10 Q Is there any sort of agency target as 11 to how many requests should be deemed simple 12 versus complex?</p> <p>13 A No, because, again, that is really 14 based on the complexity and the volume involved 15 in these cases. We're talking about a highly 16 complex, a highly -- I'm sorry -- a large volume 17 of records. It's being -- we will deem it 18 complex.</p> <p>19 Q So when you're creating the -- and the 20 statute provides for -- for -- the statute and 21 regulations certainly permit multiple tracks. In 22 fact, I think they direct the creation of</p> <p style="text-align: right;">Page 182</p>	<p>1 A It depends. So -- and I can think of 2 another example. So if I receive a request for 3 records on a person and we go to the field and we 4 access those records and the records -- it ends 5 up being 500 pages, right? It's going to take me 6 longer than 30 days to process that material. If 7 we -- I'm sorry. If we determine that we're not 8 going to be able to release the records because, 9 let's say, it's part of an active investigation, 10 we're doing a denial.</p> <p>11 So it still will be deemed complex 12 because, you know, one, we're going to have to go 13 out and get the -- go out to the field to get the 14 records. There's a high volume involved.</p> <p>15 But once we receive the records and we 16 recognize that we actually can't disclose this 17 information, then we're -- we're cutting a letter 18 and telling the requester that no records are 19 being released.</p> <p>20 Q But in terms of what is ultimately 21 going to be reviewed and produced -- do you 22 follow me?</p> <p style="text-align: right;">Page 184</p>
<p>1 multiple tracks.</p> <p>2 And I guess what -- how -- how does 3 the -- how did -- how did the agency determine 4 that -- that 20 pages or whatever is the -- sort 5 of the cutoff between simple and complex?</p> <p>6 A So, again, I want to make sure this is 7 clear. This is just one bucket of a simple 8 request, the 20 pages. I have other types of 9 simple requests, things that are going to be 10 closed in a relatively short amount of time, 11 right, that are in a separate bucket, anything 12 that is like a no record response, misdirect 13 request, you know, any categorical denials. So 14 these are requests that we generally also can 15 close in less than 30 days.</p> <p>16 Q So -- so the simple count is 17 effectively counting more than requests that are 18 actually going to require review and production, 19 fair?</p> <p>20 A Yes.</p> <p>21 Q And those -- but the complex wouldn't 22 include, like, a denial, would it?</p> <p style="text-align: right;">Page 183</p>	<p>1 A Uh-huh.</p> <p>2 Q There's a higher percentage of requests 3 according to the statistics in the simple bucket 4 that aren't going to require review and 5 production than the complex bucket?</p> <p>6 A That is correct.</p> <p>7 Q Okay.</p> <p>8 MR. RODRIGUEZ: Are you okay? Do you 9 need to take a break?</p> <p>10 THE WITNESS: No. I'm good. Thank 11 you.</p> <p>12 MR. RODRIGUEZ: Okay.</p> <p>13 THE WITNESS: Yeah.</p> <p>14 MR. RODRIGUEZ: I heard --</p> <p>15 THE WITNESS: Yeah. It's --</p> <p>16 MR. RODRIGUEZ: -- a device went off.</p> <p>17 THE WITNESS: -- going to make a noise 18 for a little bit, but we're good.</p> <p>19 MR. RODRIGUEZ: Okay.</p> <p>20 MR. ZORN: Well, if you need to take a 21 break, just let us know.</p> <p>22 THE WITNESS: I'll let you know.</p> <p style="text-align: right;">Page 185</p>



<p>1 MR. ZORN: Yeah.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 BY MR. ZORN</p> <p>4 Q Okay. So -- and the agency doesn't</p> <p>5 have a benchmark sort of aiming to have a certain</p> <p>6 percentage of simple versus complex, does it?</p> <p>7 A No. And I guess I'm struggling with</p> <p>8 this because, like, I don't know how we can get</p> <p>9 around a case that is legitimately -- it's</p> <p>10 complex.</p> <p>11 If I am -- if my staff has to process</p> <p>12 hundreds, sometimes thousands of pages, the only</p> <p>13 workaround to reduce that -- the size of that</p> <p>14 case would be to have a conversation with the</p> <p>15 requester and see if we could narrow scope.</p> <p>16 Q I follow you, and you're talking about</p> <p>17 thousands of pages, but I guess what -- what I'm</p> <p>18 kind of getting at is -- okay. And you've said</p> <p>19 it's not a hard and fast rule, and I accept that.</p> <p>20 But if the threshold for what sort of</p> <p>21 crosses into complex or simple were raised, you</p> <p>22 know, potentially, there would be a different</p> <p style="text-align: right;">Page 186</p>	<p>1 the number of pages, the length of time it's</p> <p>2 going to take us to process.</p> <p>3 You know, low staffing numbers also</p> <p>4 impact this, right? It just -- the ability to</p> <p>5 produce something quickly nowadays with such</p> <p>6 limited resources is difficult.</p> <p>7 Q So -- well, how does the staffing</p> <p>8 affect the complexity of a request?</p> <p>9 A So if a case -- if we deem a case</p> <p>10 complex -- again, it's generally due to the size</p> <p>11 of the case, and I only have 16 staff members in</p> <p>12 total to work on these cases -- earlier I said</p> <p>13 18. I'm taking myself out of this and our</p> <p>14 secretary. Okay. So legitimately people to do</p> <p>15 FOIA processing work, 16 people.</p> <p>16 So if we've deemed a request complex</p> <p>17 because it's -- the volume is high, I mean, I</p> <p>18 have 16 staff members to work on those cases. We</p> <p>19 received 16 -- over 1,600 requests just in 2022,</p> <p>20 16 people to work on all of that, with the</p> <p>21 majority being complex.</p> <p>22 Q So -- so a simple request is -- so,</p> <p style="text-align: right;">Page 188</p>
<p>1 alignment of sort of requests in the simple</p> <p>2 bucket versus the complex bucket, because, I</p> <p>3 mean, we can agree that there are some documents,</p> <p>4 just single individual documents that are more</p> <p>5 than 20 pages, right?</p> <p>6 A Yes.</p> <p>7 Q And if someone -- there's no way to</p> <p>8 narrow a request that's -- you know, even if I --</p> <p>9 if I were to request the DEA staff manual -- we</p> <p>10 were looking at that earlier.</p> <p>11 A Right.</p> <p>12 Q And that's a big document, isn't it?</p> <p>13 A Uh-huh.</p> <p>14 Q And let's say I narrowed my request to</p> <p>15 like three chapters, right?</p> <p>16 A Uh-huh.</p> <p>17 Q I'm already over 20 pages. Do you</p> <p>18 follow me?</p> <p>19 A I do.</p> <p>20 Q But that's not really a complex</p> <p>21 request, is it?</p> <p>22 A It's not. Again, it would be based on</p> <p style="text-align: right;">Page 187</p>	<p>1 really, the difference between simple and</p> <p>2 complex, as I understand it, is just the amount</p> <p>3 of time it's going to take to respond, fair?</p> <p>4 A Yes.</p> <p>5 Q Okay. And --</p> <p>6 A If we feel we can produce it in 30 days</p> <p>7 or less, we categorize it as simple.</p> <p>8 Q Okay. And it might still raise unusual</p> <p>9 circumstances, but it could be simple, right?</p> <p>10 A Let me walk this through in my head.</p> <p>11 Yes, that is true. If I have to search another</p> <p>12 field office and what comes back is two pages and</p> <p>13 I'm able to get it out in ten days, we would deem</p> <p>14 that as simple.</p> <p>15 Q But if you can get it out that quickly,</p> <p>16 it's not really necessary to have extra time to</p> <p>17 be able to complete that request, right?</p> <p>18 A Well, the reason, again, why we would</p> <p>19 have to invoke the extra time is we have to go</p> <p>20 outside of the FOIA office. Sometimes we have to</p> <p>21 go to another state to get the records, right?</p> <p>22 So we don't have access. That's why</p> <p style="text-align: right;">Page 189</p>

<p>1 we're -- we're invoking unusual circumstances.</p> <p>2 We feel that we meet the definition of unusual</p> <p>3 circumstances, particularly prong 1 for the</p> <p>4 majority of our cases.</p> <p>5 Q Okay. So for the -- there are unusual</p> <p>6 circumstances for the majority of the cases</p> <p>7 that --</p> <p>8 A I would say for the --</p> <p>9 Q -- the agency --</p> <p>10 A -- majority.</p> <p>11 Q The vast majority?</p> <p>12 A Yes.</p> <p>13 MR. ZORN: Okay. Thank you. I think</p> <p>14 I've got some understanding here now. Let's --</p> <p>15 I'm going to move to a different exhibit. Why</p> <p>16 don't I do this one? All right. So let's -- I</p> <p>17 put in exhibit -- this is 10B.</p> <p>18 (Deposition Exhibit Number 10B</p> <p>19 was marked for identification.)</p> <p>20 THE WITNESS: 10B. Okay. Okay. I</p> <p>21 have that.</p> <p>22</p> <p style="text-align: right;">Page 190</p>	<p>1 asked me about, basically what it's doing, the</p> <p>2 system is basically recalculating the timeline</p> <p>3 for completion, right, whether it's 20 or 30</p> <p>4 days. So we must have -- I have to look to see</p> <p>5 when this request was received so I can -- oh,</p> <p>6 did I jump off? Stop the clocks at -- I went to</p> <p>7 the wrong one. Sorry.</p> <p>8 Okay. I believe we received this</p> <p>9 request in the beginning of May. I don't have</p> <p>10 the date on the first entry here, but, really,</p> <p>11 what that's showing you is that, you know, we</p> <p>12 were -- we had stopped the clock at some point,</p> <p>13 and then it was restarted. The fees weren't</p> <p>14 paid. Once we had passed the 30-day timeline for</p> <p>15 response, we closed the case.</p> <p>16 Q And so looking at the May 10th, 2022, I</p> <p>17 see, "Review fees must be assessed before we</p> <p>18 process records," and that's in caps with a star.</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And that's -- that's basically</p> <p>22 instructing others that before the DEA engages in</p> <p style="text-align: right;">Page 192</p>
<p>1 BY MR. ZORN</p> <p>2 Q Okay. So -- so this is the request</p> <p>3 notes for 22-0059. Is that fair?</p> <p>4 A 00592, yes.</p> <p>5 Q Yes. Sorry. 592. And I want to look</p> <p>6 at the second -- the second part of this.</p> <p>7 The -- sorry. The second from the top</p> <p>8 on the first page -- and I understand it's in</p> <p>9 reverse chron order, but just for clarification,</p> <p>10 what is -- what is the -- sort of the target</p> <p>11 date?</p> <p>12 A This is generated by my system, and</p> <p>13 this basically gets generated. When we enter a</p> <p>14 FOIA request, we put in the date we received it.</p> <p>15 The -- the clock is now running, right?</p> <p>16 So I guess here what happened was, we</p> <p>17 stopped the clock at some point, I believe -- I'm</p> <p>18 going to have to look at this, because fees, I</p> <p>19 think, were assessed and were not paid. Let me</p> <p>20 just -- let me just double check. Yes. It looks</p> <p>21 like the clock was stopped on August 31st.</p> <p>22 So moving back to the line that you</p> <p style="text-align: right;">Page 191</p>	<p>1 any review, there needs to be payment; is that</p> <p>2 fair?</p> <p>3 A Yes.</p> <p>4 Q And does -- does the DEA actually keep</p> <p>5 track of how much -- like, let's say the</p> <p>6 payment's made. Do you follow me?</p> <p>7 A Uh-huh.</p> <p>8 Q Does the DEA then actually keep track</p> <p>9 of how, like, its reviewer's actually reviewing?</p> <p>10 A Of the time that they're actually --</p> <p>11 like how much time they've -- yes.</p> <p>12 Q And -- and if the review time is</p> <p>13 different from the estimate, what -- is money</p> <p>14 paid back?</p> <p>15 A We are supposed -- yes, we are to pay</p> <p>16 it back.</p> <p>17 Q Okay. But the DEA practice is to pay</p> <p>18 money up front before the review?</p> <p>19 A If the request -- the review fee is</p> <p>20 more than \$250, yes, advanced payment is</p> <p>21 required.</p> <p>22 Q Okay. And just -- Jenrette -- I can't</p> <p style="text-align: right;">Page 193</p>

<p>1 pronounce her last name. This is the -- a  2 couple -- it's the bottom of page 4 out of 5,  3 just if you can tell me when --  4 A Okay.  5 Q -- you're there.  6 A Let's see. Page 4. Yes, I'm there.  7 Q And "Check with SC."  8 What's "SC"?  9 A Section chief. She's speaking of me.  10 Q "If these still apply because case is  11 past 30 days," right?  12 A Uh-huh.  13 Q And -- and the fees here that  14 wouldn't -- would not be due are the search fees,  15 right?  16 A We would not have -- you're right. We  17 would not charge search fees for this case or --  18 Q Because --  19 A -- any case, really, nowadays because  20 of the amendment. The change in 2016, like I  21 said, really limited our ability to charge search  22 fees.</p> <p style="text-align: right;">Page 194</p>	<p>1 Q And it says, "Drafts need to be closely  2 reviewed under (B)(5)."  3 It's the last sentence. Now, (B)(5) is  4 the deliberative process privilege, true?  5 A Yes.  6 Q And generally speaking, draft agency  7 documents are -- are almost always going to be a  8 deliberative process?  9 A Yes. Anything that's pre-decisional  10 or -- yes.  11 Q Now, if a document, on its face, the  12 first page is pre-decisional or deliberative  13 process -- do you follow me?  14 A Yes.  15 Q Would the DEA end up charging for  16 reviewing the rest of the document?  17 A If the entire document has been  18 deemed -- meaning the entire document is  19 pre-decisional, we're withholding it in full.  20 Q Yeah. I mean, hypothetically, let's  21 say we have like a draft, like what you're -- in  22 your comment, you talk of drafts, and it doesn't</p> <p style="text-align: right;">Page 196</p>
<p>1 Q But it doesn't limit the ability to  2 charge review fee or processing fees?  3 A There isn't a processing fee, per se,  4 but it's review and duplication. Duplication, we  5 don't charge, either --  6 Q Right.  7 A -- because the days of Xeroxing records  8 is really over. It's all electronically done.  9 Q And it says -- and there were draft  10 letters and e-mails from the share drive.  11 And, actually, let's turn back down to  12 yours, because you say, "Drafts need to be  13 closely reviewed under (B)(5).  14 Do you see that?  15 A I need to see -- which page is that on?  16 Page 4? I'm sorry.  17 Q Sorry. Now we're back on page 5. This  18 is back --  19 A Okay.  20 Q -- on -- on your comment. It's a  21 May 10th, 2022, 2:27 p.m. comment.  22 A Yes.</p> <p style="text-align: right;">Page 195</p>	<p>1 really go beyond that. But just say draft.  2 Okay?  3 A Uh-huh.  4 Q A draft letter.  5 A Yes.  6 Q The reviewer looks at it. It's a draft  7 letter. It's a (B)(5) withholding.  8 When DEA goes to calculate the review  9 time, is that -- you know, is that sort of  10 calculated -- like line by line is reviewed of a  11 (B)(5) withholding?  12 A So you have to keep in mind that the  13 review has not been done yet. When the -- when  14 the fee is calculated, we are simply looking at  15 how many pages do we have that we're going to --  16 you know, have to review and process, meaning  17 review -- read the document, determine what is  18 exempt, place (B)(5) exemptions on. That hasn't  19 occurred yet. That comes later, right?  20 Q Understood. But what I'm -- where I'm  21 going with this is the seven-minute-a-page  22 estimate is sort of predicated on the notion that</p> <p style="text-align: right;">Page 197</p>

<p>1 every single page is going to be read, reviewed, 2 redacted. In practice, that never happens when 3 there's withholdings like the one I'm describing 4 now, right?</p> <p>5 A I mean, if you're telling me one -- 6 you're talking about one page, two pages that 7 we're going to exempt in full under (B)(5). We 8 still have to -- there's a -- we have to read the 9 document and place the redaction on the document.</p> <p>10 Q Well, if the -- well, first -- wait. 11 So a (B)(5) withholding is, like, produced as 12 just like a big black box?</p> <p>13 A We basically have to mark the document 14 in a manner that it's very clear that it's being 15 withheld in full under (B)(5). We have to do 16 that in the event that we're appealed or sued by 17 a requester.</p> <p>18 We want -- at the administrative level, 19 we want it to be very clear about our 20 decision-making in these withholdings, so, yes, 21 there is a redaction -- a blanket redaction, if 22 you will, placed on the document.</p> <p style="text-align: right;">Page 198</p>	<p>1 A Yes. And that's why it's called a fee 2 estimate. So if we -- if we overcharged or 3 overestimated, we would owe money back to the 4 requester in the end.</p> <p>5 Q What if someone can't afford the 6 estimate? Is there any -- any way to --</p> <p>7 A Unfortunately -- and, again, this only 8 applies to commercial use requesters -- you know, 9 we -- there are fees that have to be paid for 10 this -- for the process.</p> <p>11 And when you're talking, again, 12 thousands and thousands of pages for review, 13 unfortunately, with the lack of resources, I 14 don't have the ability to just waive the fees 15 there.</p> <p>16 Q Well, how do you determine if someone's 17 a commercial use requester?</p> <p>18 A So we would take a look at what is 19 submitted in the request letter, and if we 20 determine that there is a commercial trade or 21 profit interest in the records sought, we would 22 determine that it's commercial use.</p> <p style="text-align: right;">Page 200</p>
<p>1 Q And that takes seven minutes to put 2 that on?</p> <p>3 A Not on a single page, no.</p> <p>4 Q Okay. But -- and you're talking about 5 like a one to two-page document, but, you know, 6 if you have like a 20-page draft memo, then it's 7 just all 20 pages. Fair?</p> <p>8 A Yes. We would place the blanket, and 9 it should apply to all pages.</p> <p>10 Q And it's not going to take seven 11 minutes to go through and read those documents 12 line by line because they're being withheld, 13 right?</p> <p>14 A Right.</p> <p>15 Q And so when DEA produces its fee 16 estimate that needs to be paid up front, right, 17 that's effectively a max -- that's a maximal -- 18 that's like the most -- assuming DEA went through 19 and reviewed every single page and it was -- and 20 assuming seven minutes a page is an accurate 21 reflection, like, this is the most that you're 22 going to have to pay, right?</p> <p style="text-align: right;">Page 199</p>	<p>1 Q And does it -- does DEA make the 2 determination that it's predominantly a 3 commercial use or just any -- any commercial use?</p> <p>4 A I'm sorry. I don't know that I'm 5 following the question.</p> <p>6 Q Well, something could have a commercial 7 use, but also a non-commercial use. Is that -- 8 is that fair?</p> <p>9 A Potentially, yes.</p> <p>10 Q So -- and is -- is it the agency's 11 position that in deciding who to charge fees, its 12 based on if there's any commercial use of the --</p> <p>13 A It's based --</p> <p>14 Q -- records?</p> <p>15 A -- on information that's provided by 16 the requester. So it has to be clear to us that 17 there's a commercial use. Again, it's really on 18 the requester to tell us -- you know, if they 19 feel they're not a commercial use requestor, they 20 need to articulate that so we can review it.</p> <p>21 Q So -- and -- and I think there are sort 22 of contrasting examples in the record here</p> <p style="text-align: right;">Page 201</p>

<p>1 depending on the different plaintiffs, so I just 2 kind of want to tease this out a little bit. 3 In the case of AIMS, that was a 4 commercial request, right? 5 A As far as I understand, yes. 6 Q And that's because it was DEA's 7 position that AIMS was going to use the record to 8 do what? 9 A So my understanding is that AIMS is a 10 palliative care clinic, and, you know, clearly, 11 there would be a profit interest in the records 12 sought. My understanding is that they are trying 13 to obtain access to psilocybin to treat patients. 14 My belief is that there certainly would be a 15 profit interest down the line. 16 Q So under the right to trial law, 17 that's -- that's the -- 18 A I mean, I can't speak to that -- the 19 law. That's certainly not my area of expertise. 20 But when I'm evaluating whether a request -- a 21 requester is commercial use or not, that's what 22 we glean from the request letter.</p> <p style="text-align: right;">Page 202</p>	<p>1 Q -- the requester's responsibility. 2 Okay. That makes sense. 3 Okay. So I am curious -- when we look 4 at August 22nd, 2022, this is -- this is 5 Stephanie Evans. 6 And just -- just to kind of set some 7 atmospherics here, this is Ms. Tucker's request 8 on -- relating to records about the right to try 9 psilocybin. Fair? 10 A Yes. 11 Q And there's notes here about a meeting 12 with Ms. Anne Cotter, judicial law clerk to Judge 13 Teresa Wallbaum. 14 A Uh-huh. 15 Q Do you see that? 16 Like, am I missing something? What -- 17 what did this request have to do with -- with -- 18 with Judge Wallbaum or Ms. Cotter? 19 A Let me take a look at this real quick. 20 So for this particular request, our 21 staff had already begun processing some of the 22 records before we assessed this review fee.</p> <p style="text-align: right;">Page 204</p>
<p>1 Q Okay. That's totally fair. 2 A Okay. 3 Q And -- now, I made a couple requests, 4 and I kind of clearly laid out, like, I wanted to 5 write, like, a journalism story, and that's been 6 treated as non-commercial, right? 7 A Absolutely. One of your requests in 8 particular -- and I think you'll recall you and I 9 kind of spoke on a few just because I wanted to 10 clarify -- 11 Q Yeah. 12 A -- your requestor category and make 13 sure that I was proper in that assessment. 14 So for one in particular, you did 15 provide the requirements or the necessary 16 information to meet media status, so we did 17 categorize you as such. 18 Q Okay. So there is a -- this is not 19 a -- there is a deliberate process that the 20 agency goes through and takes into consideration 21 facts when presented by the requester. It's -- 22 A Absolutely.</p> <p style="text-align: right;">Page 203</p>	<p>1 Management realized that we were -- we were -- 2 again, we were proceeding without that. 3 So what you're seeing here is, she had 4 a conversation with the staff and the 5 administrative law judge about the records that 6 we received. She was trying to process. We -- 7 management team kind of put the brakes on this 8 and said, wait a second, we haven't assessed the 9 review fee yet, we shouldn't be continuing with 10 the processing. 11 So for this particular request, we 12 actually shaved off the time that was already 13 invested in this case. We did not roll that into 14 the review fee. We backed that out of there. 15 But that's what you're seeing here. So any 16 conversation they have internally at DEA, I mean, 17 we use the notes as best as we can to document 18 actions in these cases. 19 Q And just for the record, tryptamine is 20 not a psychedelic drug, but -- and psilocybin is 21 a tryptamine, so there appears to be some 22 misunderstanding here, but I set that aside.</p> <p style="text-align: right;">Page 205</p>

<p>1 I guess -- I guess I'm just kind of  2 curious as to -- because I -- I was in front of  3 Judge Wallbaum, and I can only assume that this  4 related to that proceeding, but I just don't know  5 how this -- I mean, how -- I don't know how to  6 ask this of, like, what's going on here?  7 Like, why is -- is that part of this  8 sort of investigation here?  9 A So, again, I -- and I wasn't part of  10 this conversation, but my -- from reading this  11 note, my assessment is that if our team is  12 reading a document that they thoroughly don't  13 understand, they're generally going to pick up  14 the phone and call the record owner and say,  15 explain to me what I'm reading here. So I want  16 to make sure that --  17 Q Okay.  18 A -- I'm processing this correctly, is  19 this responsive, these types of things.  20 Q Okay.  21 A Yeah.  22 Q So that's helpful. So sometimes the</p> <p style="text-align: right;">Page 206</p>	<p>1 A Correct.  2 Q And just looking at the document -- and  3 there's an annotation I made about releasing  4 their names on the document, and I'll get to that  5 question in a moment, but -- but my first  6 question is, based on the context of this  7 document, you can tell that this is the request  8 for the two presentations that were -- and  9 I'll --  10 A Yes.  11 Q -- represent for the record that this  12 was timely collected and produced. I got this  13 fairly quickly.  14 But you can recall that this was marked  15 as unusual circumstances, right?  16 A It was.  17 Q And that's because, as we've discussed  18 throughout the day, Theresa Carbonaro does not  19 sit inside the FOIA office?  20 A Correct. I don't have access to her  21 records.  22 Q Right. And so it was a fairly simple</p> <p style="text-align: right;">Page 208</p>
<p>1 FOIA staff talks to other groups to understand  2 the document and have a better idea as to whether  3 something's responsive or exemption or so on and  4 so forth?  5 A Yes, all the time.  6 Q Okay. And that -- that goes into the  7 seven-minute sort of estimate as well, right?  8 A No. No.  9 Q Okay.  10 A Those conversations don't get rolled  11 into the estimate. The estimate is really just  12 purely based on how many records do I have for  13 review, how long is it going to take me to do the  14 processing now.  15 MR. ZORN: All right. That's helpful.  16 Okay. Let's see. All right. I'm going to  17 introduce 10C.  18 (Deposition Exhibit Number 10C  19 was marked for identification.)  20 BY MR. ZORN  21 Q And so this is request 22 -- the  22 request notes for 22-00845-F, correct?</p> <p style="text-align: right;">Page 207</p>	<p>1 request to complete, true?  2 A Yes. Simple.  3 Q Just reached out to her, and she sent  4 the documents, right?  5 A Yes.  6 Q And -- and it was -- I don't even know  7 if it was characterized as simple, complex or  8 anything, right?  9 A I would check -- I would have to  10 confirm my system, but we should have deemed it  11 simple, because we produced it to you in 21 days,  12 under the 30 days. So --  13 Q That sounds --  14 A -- we would have --  15 Q -- right, yeah.  16 A Yeah.  17 Q And so my last question here is -- you  18 know, there's -- I see they're releasing their  19 names on the documents, and that's what I  20 highlighted.  21 And I guess what would be -- what would  22 have been the basis -- let's assume they weren't</p> <p style="text-align: right;">Page 209</p>



<p>1 submitted publicly. What would have been the 2 basis to not release their names on the document? 3 A So, generally, we do not release the 4 names of DEA employees on any document unless 5 that document has already been made publicly 6 available. So we protect -- there is a privacy 7 concern, and so we generally -- excuse me -- we 8 redact those under FOIA exemptions (B)(6) and 9 (7)(C). 10 In this circumstance, I didn't -- I did 11 not believe we were going to withhold their 12 names, but as a courtesy to them, I picked up the 13 phone and I just made sure there were no 14 concerns. And I, you know, had the conversation 15 about it was -- this document, I understand, has 16 already been released in full, you know, just 17 wanted to make sure they had no concerns. But we 18 did not withhold their names. 19 Q So -- so what is the (B)(6) exemption? 20 A This -- oh, excuse me. This is -- 21 protects -- it's a personal privacy exemption, so 22 names -- you know, we redact the names of all of</p> <p style="text-align: right;">Page 210</p>	<p>1 right? 2 A In what regard? I'm sorry. 3 Q Well, the FOIA requires that -- that -- 4 MR. RODRIGUEZ: Objection. Calls for 5 legal conclusion. 6 BY MR. ZORN 7 Q Yeah. FOIA requires that -- that 8 substantive statements of policy be -- be made 9 affirmatively available, right? 10 A It does. 11 Q And so that that -- what you've 12 described sounds like a substantive policy that 13 the agencies are following, right? 14 A Yes. 15 Q And just to be clear about the 16 implication of this policy, would that apply to, 17 like, an e-mail? 18 A It would apply to e-mails. It would 19 apply to all records. 20 Q So it's -- and, you know, if you need 21 to pull up the statute, then that's fine, but I 22 just want to read Exemption 6.</p> <p style="text-align: right;">Page 212</p>
<p>1 our employees under that exemption with the 2 exception of SES personnel. So SES names, we do 3 not redact. 4 Q So is that a -- is that a policy of 5 the -- 6 A This is actually a DOJ policy -- 7 Q It's -- 8 A -- that we follow. 9 Q It's not even written down, right? 10 A It's -- it was captured in a memo that 11 OIP put out a couple of years ago about 12 protecting the names of certain agency, you know, 13 staff, and so we've been following those 14 guidelines ever since. 15 Q Do you know where I can find that OIP 16 memo? 17 A If it's not on their website, you might 18 have to file a FOIA request. I apologize to say. 19 I don't know if that is actually publicly 20 available. 21 Q And if it weren't publicly available, 22 that would be another FOIA violation of the day,</p> <p style="text-align: right;">Page 211</p>	<p>1 It's the position of the United States 2 Department of Justice that names are personnel 3 and medical files and similar files, the 4 disclosure of which would constitute a clearly 5 unwarranted invasion of personal privacy; is that 6 right? 7 A That is -- 8 MR. RODRIGUEZ: Objection. Calls for 9 legal conclusion. 10 You can try to answer. 11 THE WITNESS: That is correct. 12 BY MR. ZORN 13 Q And as a matter of policy, names are 14 being redacted because it's the Department of 15 Justice's contention that those are personnel 16 files? 17 A They're personnel, medical or other 18 files, which basically means it could be any 19 file. So for us, a lot of our records are law 20 enforcement sensitive, and we want to protect the 21 names of our agents, our intel analysts, so on 22 and so forth. We do believe that they have a</p> <p style="text-align: right;">Page 213</p>

<p>1 privacy right.</p> <p>2 Q Well -- and to be fair, there's a</p> <p>3 completely different exemption for law</p> <p>4 enforcement officers, right?</p> <p>5 A We use the combination of (B)(6) and</p> <p>6 (7)(C) to protect their names, yes.</p> <p>7 Q But Theresa Carbonaro is not a -- she</p> <p>8 wasn't -- she isn't and wasn't law enforcement?</p> <p>9 A She is a pharmacologist, as far as I</p> <p>10 know, but we still, depending on the type of</p> <p>11 document, would protect her name under (B)(6) and</p> <p>12 (7)(C).</p> <p>13 Q Which --</p> <p>14 A Not in this circumstance.</p> <p>15 Q So -- but -- and 7 is records or</p> <p>16 information compiled for law enforcement</p> <p>17 purposes?</p> <p>18 A Uh-huh.</p> <p>19 Q But only to the extent the production</p> <p>20 of such law enforcement records or information --</p> <p>21 and then getting down to C -- could reasonably be</p> <p>22 expected to constitute an unwarranted invasion of</p> <p style="text-align: right;">Page 214</p>	<p>1 Q But we can also agree that not everyone</p> <p>2 at DEA is working on law enforcement or sensitive</p> <p>3 tasks with respect to everything that they do; is</p> <p>4 that fair?</p> <p>5 A That is fair.</p> <p>6 Q Okay. And, you know, for example, a</p> <p>7 pharmacologist is not performing law enforcement</p> <p>8 functions in everything that he or she does; is</p> <p>9 that fair?</p> <p>10 A Fair.</p> <p>11 Q But it is the agency's policy, per the</p> <p>12 Department of Justice, not -- not -- this is not</p> <p>13 DEA policy. This is DOJ policy.</p> <p>14 Do you follow me?</p> <p>15 A Uh-huh.</p> <p>16 Q That -- that that person's name needs</p> <p>17 to be redacted regardless of the function they're</p> <p>18 performing?</p> <p>19 A That is correct.</p> <p>20 Q And do you know when this policy</p> <p>21 started?</p> <p>22 A I want to say it was sometime during</p> <p style="text-align: right;">Page 216</p>
<p>1 personal privacy; is that fair?</p> <p>2 A That is correct.</p> <p>3 Q Now, when a person is serving as a</p> <p>4 government servant, what expectation of personal</p> <p>5 privacy is there?</p> <p>6 A So, again, if -- in the -- this has</p> <p>7 been the policy across the department. If --</p> <p>8 generally, employees that are not at the SES</p> <p>9 level, we don't consider to be public facing at</p> <p>10 the same level, and so they have a right to</p> <p>11 privacy, and we want to protect the names of</p> <p>12 those employees.</p> <p>13 Obviously, they work in very</p> <p>14 sensitive -- sensitive matters for the DEA, and</p> <p>15 so our general practice is to redact their names</p> <p>16 below SES level.</p> <p>17 Q Okay. So -- but -- and we can</p> <p>18 certainly agree that there are many, many</p> <p>19 individuals at DEA who do very sensitive law</p> <p>20 enforcement tasks.</p> <p>21 We can agree on that, right?</p> <p>22 A Yes.</p> <p style="text-align: right;">Page 215</p>	<p>1 2019.</p> <p>2 Q Do you know who created the policy?</p> <p>3 A This was captured in a memo that was</p> <p>4 issued from the former director of Office of</p> <p>5 Information Policy.</p> <p>6 Q And what's that person's name?</p> <p>7 A Melanie Pustay.</p> <p>8 Q Okay. And was that signed off on by</p> <p>9 Ms. -- this would have been during the Trump</p> <p>10 administration, right?</p> <p>11 A Yes.</p> <p>12 Q And who was -- do you know who the DOJ</p> <p>13 chief FOIA officer was in 2019?</p> <p>14 A That I do not.</p> <p>15 Q Okay. So we're getting a little far</p> <p>16 field. So let me --</p> <p>17 MR. RODRIGUEZ: Yeah. And we'll go off</p> <p>18 the record?</p> <p>19 MR. ZORN: Yeah.</p> <p>20 (Brief off-the-record discussion.)</p> <p>21 MR. ZORN: Okay. So there's no</p> <p>22 question pending, so why don't I introduce</p> <p style="text-align: right;">Page 217</p>

<p>1 Exhibit 9. And it's in the folder.  2 (Deposition Exhibit Number 9  3 was marked for identification.)  4 BY MR. ZORN  5 Q And if you could tell me when you have  6 it up.  7 A I have it up.  8 Q Okay. Now, this is a letter dated  9 August 17th, 2022, from America First Legal.  10 Do you see that?  11 A Yes.  12 Q And this is not a document you've seen  13 before, is it?  14 A No.  15 Q And what I'd like to do is, if we could  16 go a little bit farther into the document,  17 there's -- you'll see page 4 is blank, and then  18 there is a page 5.  19 A Yes.  20 Q And do you see page 5?  21 A Uh-huh.  22 Q And there's a bunch of black boxes on</p> <p style="text-align: right;">Page 218</p>	<p>1 civil. I'm here -- we're here to talk about DOJ  2 writ large and DEA.  3 So my first question is: Does DEA have  4 a -- have a policy or even capability to search  5 employees' e-mails without getting consent?  6 A Yes.  7 Q And does it have a policy one way or  8 the other on doing that?  9 A We have -- we have two standard  10 operating procedures that cover this topic, and  11 we -- our practice is not to rely on the owner of  12 the e-mails to do their own search.  13 The only additional thing that we do  14 is, if they involved, like, higher level  15 officials, as a courtesy, we let them know that a  16 FOIA request has come in, we would like to go to  17 the Information Systems Division to do the  18 search, you know, and so as a courtesy, we notify  19 them of that.  20 Q But -- but you're talking about notice.  21 There's no policy of consent or permission that  22 you're aware of, is there?</p> <p style="text-align: right;">Page 220</p>
<p>1 the page that's redacting information, including  2 e-mail addresses. You can see that, right?  3 A Yes.  4 Q And because this isn't a document  5 you've seen before, I'm not going to ask you why  6 those e-mail addresses are redacted, although I  7 suspect we covered it in the last module.  8 What I'd like for you to do is if you  9 could just scroll down to -- this is -- if you  10 could scroll down to the April 14th, 2022,  11 3:17 p.m. e-mail. And it's to Elizabeth Wood,  12 and it begins with "Hi Elizabeth."  13 A Number 14. There we go. Okay. I'm  14 there.  15 Q Now, on the next page, I've highlighted  16 in this paragraph, "Secondarily, I understand the  17 Civil Division has a policy of not conducting a  18 FOIA search on employee e-mails without first  19 getting their permission or consent."  20 Did I read that correctly?  21 A You did.  22 Q Now, we're not here to talk about DOJ</p> <p style="text-align: right;">Page 219</p>	<p>1 A No. And I do not seek employees'  2 permission.  3 Q And you mentioned these -- the two  4 standard operating procedures.  5 Were those both produced?  6 A Yes. Yes.  7 MR. ZORN: Are we sure about that?  8 THE WITNESS: So we're talking about  9 two --  10 MR. ZORN: If not, we can just --  11 THE WITNESS: Sorry.  12 MR. RODRIGUEZ: They were either  13 produced or identified on the privilege log.  14 There were -- there were at least a  15 couple of SOPs that were withheld. I know one of  16 them concerned, like, the national background  17 information system and how you access that, and  18 another one involved the investigative files,  19 maybe.  20 THE WITNESS: Uh-huh.  21 MR. RODRIGUEZ: And if there -- you  22 have a particular interest in those, we can talk</p> <p style="text-align: right;">Page 221</p>

<p>1 about it, but they -- they also seemed not really</p> <p>2 relevant to the claims, but they were withheld</p> <p>3 for law enforcement privilege.</p> <p>4 I'll double check on this one, but --</p> <p>5 MR. ZORN: Yeah.</p> <p>6 THE WITNESS: I think we did.</p> <p>7 MR. RODRIGUEZ: It sounds familiar, so</p> <p>8 it should --</p> <p>9 THE WITNESS: Yeah.</p> <p>10 MR. RODRIGUEZ: -- either be identified</p> <p>11 in the privilege log or -- or it was produced.</p> <p>12 THE WITNESS: And they would reference</p> <p>13 e-mail searches on the front page of both.</p> <p>14 BY MR. ZORN</p> <p>15 Q Okay. And then the next -- let's look</p> <p>16 at the next paragraph here.</p> <p>17 "Thirdly, I asked about the unusual</p> <p>18 circumstances determination. I asked if we were</p> <p>19 somehow able to identify even 20 of the correct</p> <p>20 custodians who had communications, could this be</p> <p>21 a simple request processed in the normal course.</p> <p>22 The short answer was no, it cannot be, because</p> <p style="text-align: right;">Page 222</p>	<p>1 bit. There's -- there's a little -- there's --</p> <p>2 there's some text highlighted here about the</p> <p>3 policy of getting consent from employee to a FOIA</p> <p>4 search. That's a written policy.</p> <p>5 Do you see that? It's April 14th.</p> <p>6 A I see the April 15th one. Let me go</p> <p>7 down. Getting consent from employees --</p> <p>8 Q Yes.</p> <p>9 A -- prior to a FOIA search? Okay.</p> <p>10 Q And this is not a policy DEA has,</p> <p>11 right?</p> <p>12 A We -- we don't have a policy that tells</p> <p>13 the vast majority of employees that we are not</p> <p>14 going to go to you for your own searches, no.</p> <p>15 That does not exist.</p> <p>16 Q Right. And my real question here is --</p> <p>17 we see that Ms. Wood says it's not a written</p> <p>18 policy. Do you see that?</p> <p>19 A Yes.</p> <p>20 Q And I guess my -- my question here is,</p> <p>21 you know, the DEA has produced a number of</p> <p>22 written policies. You know, how are -- are there</p> <p style="text-align: right;">Page 224</p>
<p>1 assuming there are records, the Civil Division's</p> <p>2 FOIA office would still have to contact the</p> <p>3 custodians, perform the search (or have the</p> <p>4 custodian do so), compile the records, and review</p> <p>5 them for responsiveness and redactions. My</p> <p>6 understanding is that, short of there being no</p> <p>7 responsive records, there is no way to obtain a</p> <p>8 determination of anything other than unusual</p> <p>9 circumstances despite the request being for</p> <p>10 communications with one specific non-governmental</p> <p>11 e-mail address."</p> <p>12 Did I read that correctly?</p> <p>13 A You did.</p> <p>14 Q And this -- this is not -- again, this</p> <p>15 is talking about the Civil Division, but, again,</p> <p>16 this is a department-wide understanding of the</p> <p>17 unusual circumstances exception, which is, if you</p> <p>18 have to contact someone else, that's unusual</p> <p>19 circumstances, someone else outside the FOIA</p> <p>20 office; fair?</p> <p>21 A Yes.</p> <p>22 Q Okay. And I want to scroll up a little</p> <p style="text-align: right;">Page 223</p>	<p>1 unwritten policies that weren't produced</p> <p>2 regarding FOIA processing, or was what was</p> <p>3 produced -- does that -- that -- those are the</p> <p>4 FOIA policies?</p> <p>5 A What is produced -- what we produced to</p> <p>6 you is all we have in place as of right now.</p> <p>7 Q Okay. Are there unwritten policies at</p> <p>8 DEA for FOIA processing or --</p> <p>9 A I mean, I can't -- I can't really speak</p> <p>10 to those or think of those in the moment, but I</p> <p>11 can tell you, I have a list of things I would</p> <p>12 like to put into writing. So, you know, there's</p> <p>13 how to process certain types of cases.</p> <p>14 Q Okay.</p> <p>15 A Yeah.</p> <p>16 Q But those aren't, like, really DEA</p> <p>17 policies; those are more just like best</p> <p>18 practices?</p> <p>19 A Internal for my staff, right, that's</p> <p>20 what that would be for.</p> <p>21 MR. ZORN: Okay. I definitely don't</p> <p>22 have much more than an hour, so if we go off the</p> <p style="text-align: right;">Page 225</p>

<p>1 record and come back, I think that will just</p> <p>2 be it.</p> <p>3 THE WITNESS: Okay.</p> <p>4 MR. ZORN: All right.</p> <p>5 MR. RODRIGUEZ: Off the record.</p> <p>6 VIDEO TECHNICIAN: Going off the</p> <p>7 record, the time is 15:09 p.m.</p> <p>8 (Recess 3:09 p.m. to 3:20 p.m.)</p> <p>9 VIDEO TECHNICIAN: Going back on the</p> <p>10 record, the time is 15:20 p.m.</p> <p>11 MR. ZORN: Welcome back, Ms. Miller.</p> <p>12 THE WITNESS: Thank you.</p> <p>13 MR. ZORN: Also, in the marked exhibits</p> <p>14 folder, you've got Exhibit 4, and I've just got a</p> <p>15 couple of quick questions about it. So if you</p> <p>16 can tell me when you have it pulled up.</p> <p>17 (Deposition Exhibit Number 4</p> <p>18 was marked for identification.)</p> <p>19 THE WITNESS: Okay.</p> <p>20 BY MR. ZORN</p> <p>21 Q And again I'll represent for the</p> <p>22 record, I made the blue highlights. The document</p> <p style="text-align: right;">Page 226</p>	<p>1 to me, you can see at the top it's "Intake Team</p> <p>2 Procedures," and then in parenthesis, "needs to</p> <p>3 be put into SOP."</p> <p>4 So this is essentially something that</p> <p>5 needs to be put into an SOP, but hasn't been put</p> <p>6 into one yet?</p> <p>7 A Just haven't put it into the nice SOP</p> <p>8 format yet, yeah.</p> <p>9 Q All right.</p> <p>10 A This was typed up, and we're trying to</p> <p>11 get all our SOPs --</p> <p>12 Q All right. And several of those SOPs</p> <p>13 were produced, such as the spaces required</p> <p>14 between sentences?</p> <p>15 A Yes.</p> <p>16 Q Yeah. And then there was -- there's an</p> <p>17 SOP on -- on processing requests, which was</p> <p>18 produced, an SOP on -- on TC searches.</p> <p>19 What are TC searches?</p> <p>20 A So that -- TC is the acronym for the</p> <p>21 Information System Division, so that SOP covers</p> <p>22 how we handle searches for e-mails agency-wide.</p> <p style="text-align: right;">Page 228</p>
<p>1 was produced without that.</p> <p>2 And so -- so at the very top, it says</p> <p>3 "FSRN meeting agenda."</p> <p>4 Do you see that?</p> <p>5 A I do.</p> <p>6 Q And so what is FSRN again?</p> <p>7 A So, again, this is one of our former</p> <p>8 acronyms. It used to be the acronym for the</p> <p>9 intake unit.</p> <p>10 Q All right. And my first question is:</p> <p>11 What is this document I'm looking at?</p> <p>12 A Let me see here for one moment.</p> <p>13 So this is part of the training for the</p> <p>14 new -- new staff members on the intake unit.</p> <p>15 This is giving them instructions on how to load</p> <p>16 certain documents into our case management</p> <p>17 system.</p> <p>18 I'm just kind of skimming this for one</p> <p>19 moment. Yeah, this is -- it's basically</p> <p>20 providing instruction on how we handle certain</p> <p>21 types of FOIA matters in the office.</p> <p>22 Q Okay. And the PDF as it was produced</p> <p style="text-align: right;">Page 227</p>	<p>1 Q Okay. And -- and that's a good</p> <p>2 question, which is: How are e-mails kept at DEA?</p> <p>3 A How are they kept?</p> <p>4 Q How are they stored?</p> <p>5 A So this an IT question that I can't</p> <p>6 really articulate for you. I mean, my -- what I</p> <p>7 could articulate is how we initiate a search for</p> <p>8 e-mail records --</p> <p>9 Q Well --</p> <p>10 A -- and how it's collected.</p> <p>11 Q Well, let's start there.</p> <p>12 A Okay.</p> <p>13 Q So how -- let's -- well, there was a</p> <p>14 request. One of my requests was for e-mails, but</p> <p>15 let's just take a hypothetical request.</p> <p>16 I want -- I give you two employees. I</p> <p>17 want their e-mails, and I give you search terms.</p> <p>18 Just walk me through the steps of collecting</p> <p>19 and -- and reviewing and producing --</p> <p>20 A Sure.</p> <p>21 Q -- those e-mails.</p> <p>22 A We would review that request. We would</p> <p style="text-align: right;">Page 229</p>

<p>1 draft up what we call a search memo. We would 2 send the memo along with a request letter to our 3 point of contact that sits in the office of -- 4 the Information Technology Division.</p> <p>5 We would have them -- they reach out to 6 another unit within that division to actually 7 conduct this -- the e-mail search. They use a 8 particular tool called Intelra to capture these 9 responsive e-mails.</p> <p>10 And then once the search is done -- we 11 give the offices five days to complete a search. 12 So once we get those records or we're notified 13 that the records are ready, my team will go into 14 that Intelra site and take -- take the e-mails and 15 load them into our own case management system, 16 FOIAXpress, to begin processing.</p> <p>17 Q So -- and what -- do you have any 18 conception of what percentage of FOIA requests 19 are for e-mails?</p> <p>20 A I do not have the percentage, no. I 21 wouldn't be able to tell you off the top of my 22 head.</p> <p style="text-align: right;">Page 230</p>	<p>1 might not be a fair question, but is there any 2 specialized training required to operate this -- 3 this other system?</p> <p>4 A For Intelra, there was. I had to take 5 my team out to the office where -- I had to take 6 them to that part of Virginia where the 7 intelligence -- I'm sorry -- the Information 8 Systems Division sits to train them how to use 9 the tool to pull those e-mails and bring them 10 into our case management system.</p> <p>11 And there was an SOP written on this, 12 and so, yes, there was some training for my staff 13 in how to utilize that system.</p> <p>14 Q And -- wait. So the staff knows how to 15 use -- the FOIA staff --</p> <p>16 A So --</p> <p>17 Q -- knows how to use --</p> <p>18 A -- let me --</p> <p>19 Q -- that system?</p> <p>20 A -- clarify. So the experts -- the 21 subject matter experts that sit in our IT 22 division are the ones that actually do the search</p> <p style="text-align: right;">Page 232</p>
<p>1 Q And so is it your understanding -- and 2 maybe you don't know, but -- but that there is a 3 centralized server with DEA e-mails?</p> <p>4 A Probably. I don't know exactly how 5 it's all kept. You know, I'm not -- I admit I'm 6 not an IT expert, so --</p> <p>7 Q Okay. And I'm not saying it is or 8 isn't the case, but let's just assume there is a 9 single server that has all DEA e-mails or some 10 database that allows a centralized repository.</p> <p>11 Do you follow me?</p> <p>12 A Yes.</p> <p>13 Q It's still the position of DEA and DOJ, 14 for that matter, that because that server isn't 15 in the FOIA office, unusual circumstances 16 every -- every time?</p> <p>17 A Correct. And the unit that runs the 18 e-mails -- does the e-mail searches for us sits 19 in another city in Virginia. They're not located 20 in our headquarters buildings in Arlington where 21 the FOIA office is located.</p> <p>22 Q Could -- is it possible -- I mean, it</p> <p style="text-align: right;">Page 231</p>	<p>1 for the e-mails, and they load them into a tool 2 called Intelra. Once that process is done, they 3 notify my team it's complete, and then we have to 4 log into Intelra to pull those responsive records 5 out.</p> <p>6 So they're not searching for records, 7 my team. They're basically retrieving the 8 material that's already been placed into Intelra 9 for them, if that makes sense.</p> <p>10 Q And the accessing Intelra by the FOIA 11 staff is done remotely, right?</p> <p>12 A It's -- right. It's done in Arlington 13 where we sit, right.</p> <p>14 Q And then you're saying that this IT 15 staff is in some other -- and we don't want to 16 talk about the location --</p> <p>17 A Sure.</p> <p>18 Q -- but we're just saying it's some 19 other location, right?</p> <p>20 A Correct.</p> <p>21 Q Does this process change at all if, 22 instead, the FOIA office were on the third floor</p> <p style="text-align: right;">Page 233</p>



<p>1 and the IT office is on the first floor?</p> <p>2 A No. It would be the same process.</p> <p>3 Q So it's unusual circumstances -- well,</p> <p>4 if it were the first and third floor, it would</p> <p>5 still be unusual circumstance, right?</p> <p>6 A It would be, again, because we just</p> <p>7 simply don't have access to the e-mail records.</p> <p>8 We don't have access to the tool to retrieve</p> <p>9 employees' e-mail records. We have to rely on</p> <p>10 someone else to do that for us.</p> <p>11 Q Well, now, retrieving e-mail records is</p> <p>12 a -- it's certainly a function to search and</p> <p>13 produce for FOIA purposes, right?</p> <p>14 A Yes.</p> <p>15 Q I imagine a congressional subpoena</p> <p>16 might be another instance where e-mails had to be</p> <p>17 searched and produced?</p> <p>18 A Uh-huh. Yes.</p> <p>19 Q Are you aware of any other reason that</p> <p>20 the agency would search and produce e-mail</p> <p>21 records other than to respond to a FOIA request</p> <p>22 or subpoena?</p> <p style="text-align: right;">Page 234</p>	<p>1 know, let's say they get a request to collect all</p> <p>2 the e-mails belonging to so and so, that there's</p> <p>3 a good chance that that's because of a FOIA</p> <p>4 request.</p> <p>5 MR. RODRIGUEZ: Objection. Foundation.</p> <p>6 THE WITNESS: Yes, it could be. Yes.</p> <p>7 BY MR. ZORN</p> <p>8 Q Okay. And there are other</p> <p>9 circumstances in which that -- that employee</p> <p>10 might be searching for and producing e-mails,</p> <p>11 fair?</p> <p>12 A Yes.</p> <p>13 Q Like I said, a court subpoena or even</p> <p>14 in this case, we had requests for production.</p> <p>15 This wasn't a FOIA request, fair?</p> <p>16 A Fair.</p> <p>17 Q But a FOIA request is one of the</p> <p>18 situations?</p> <p>19 A Yes.</p> <p>20 Q Okay. And, in fact, it's not an</p> <p>21 uncommon situation?</p> <p>22 A It's not uncommon.</p> <p style="text-align: right;">Page 236</p>
<p>1 A I mean, I can't speak to that. I can</p> <p>2 only speak to my functions in FOIA.</p> <p>3 Q It seems to me that a large part of the</p> <p>4 job of -- of -- if not the predominant part of</p> <p>5 the job of searching this in Intela or --</p> <p>6 sorry -- even gathering the e-mails is FOIA, like</p> <p>7 that -- would you agree?</p> <p>8 A Could you rephrase that question? I'm</p> <p>9 sorry.</p> <p>10 Q This particular function that we've</p> <p>11 been discussing of collecting e-mails to produce,</p> <p>12 it seems to me that a major reason one would do</p> <p>13 that is to respond to a FOIA request.</p> <p>14 MR. RODRIGUEZ: Objection. Foundation.</p> <p>15 You can try to answer.</p> <p>16 THE WITNESS: It -- I mean, it</p> <p>17 represents a percentage, yes, of all FOIA</p> <p>18 requests I receive per year. I wouldn't say</p> <p>19 every request requires us to pull e-mails.</p> <p>20 BY MR. ZORN</p> <p>21 Q And do -- well, no, and I'm talking</p> <p>22 sort of from the IT side of things, which is, you</p> <p style="text-align: right;">Page 235</p>	<p>1 Q In fact, I would venture to say that</p> <p>2 happens multiple times a month that your office</p> <p>3 is asking for e-mails to respond to FOIA</p> <p>4 requests, right?</p> <p>5 A Yes.</p> <p>6 Q What about on a weekly basis? How many</p> <p>7 times a week?</p> <p>8 A So, again, I don't have those</p> <p>9 statistics to tell you, I mean, and it varies</p> <p>10 week to week.</p> <p>11 Q And you know -- you know the folks over</p> <p>12 there by their names. I'm not going to ask them,</p> <p>13 but you do know them --</p> <p>14 A I do.</p> <p>15 Q -- right?</p> <p>16 Because you -- you interface with them</p> <p>17 fairly regularly, right?</p> <p>18 A We do.</p> <p>19 Q Okay. And, in fact, you've met these</p> <p>20 people, right?</p> <p>21 A I have.</p> <p>22 Q They don't work in your office, but you</p> <p style="text-align: right;">Page 237</p>

<p>1 work closely with them, right?</p> <p>2 A Yes.</p> <p>3 Q Okay. Okay. Fair enough. Let's see.</p> <p>4 Let me -- let me move -- so let's just move back</p> <p>5 to this exhibit.</p> <p>6 There -- I highlighted this AINS</p> <p>7 Manual. What is the AINS Manual?</p> <p>8 A So AINS is the company that owns the</p> <p>9 case management system that we use, FOIAXpress.</p> <p>10 Q Okay. And then there's "Third Party</p> <p>11 Checklist" in all caps.</p> <p>12 What is that?</p> <p>13 A So the team put together a checklist.</p> <p>14 And I admit I don't have the particulars</p> <p>15 memorized, you know, on that checklist, but,</p> <p>16 again, these guidance documents were created to</p> <p>17 help them walk through the process of how you</p> <p>18 handle certain types of FOIA requests related to</p> <p>19 third-party individuals.</p> <p>20 MR. ZORN: Okay. All right. I think</p> <p>21 we're done with that exhibit. And let's move</p> <p>22 to -- I think this is Exhibit 6 now.</p> <p style="text-align: right;">Page 238</p>	<p>1 policies with respect to FOIA at the Department</p> <p>2 of Justice that are Department of Justice</p> <p>3 policies that all of these decentralized</p> <p>4 components all follow?</p> <p>5 A Correct.</p> <p>6 Q Okay. And we've discussed one of</p> <p>7 those, which is this unusual circumstances</p> <p>8 policy, right?</p> <p>9 A Yes. That's part of the FOIA</p> <p>10 regulations, the department's FOIA regulations.</p> <p>11 Q The department's FOIA regulations?</p> <p>12 A Correct.</p> <p>13 Q And that's how it views the statute?</p> <p>14 A Correct.</p> <p>15 Q Okay. And so looking now at page 3.</p> <p>16 And -- and so you see "FOIA Leadership," but</p> <p>17 we're not -- we don't need to talk about the</p> <p>18 chief FOIA officer anymore. I think we got that.</p> <p>19 I just want to look at the last line of</p> <p>20 that, which is that "Associate Attorney General</p> <p>21 Vanita Gupta, the third-ranking official at the</p> <p>22 Department of Justice, serves as the Department's</p> <p style="text-align: right;">Page 240</p>
<p>1 (Deposition Exhibit Number 6</p> <p>2 was marked for identification.)</p> <p>3 BY MR. ZORN</p> <p>4 Q Just let me know when you have it up.</p> <p>5 A Yes, we have it up.</p> <p>6 Q Okay. So -- and I've annotated this</p> <p>7 document as well, but looking at the first page,</p> <p>8 this is the Department of Justice Chief FOIA</p> <p>9 Officer Report; is that correct?</p> <p>10 A Yes, it is.</p> <p>11 Q Okay. And just turning to the second</p> <p>12 page, I highlighted "Decentralized Nature of FOIA</p> <p>13 Processing at Department of Justice."</p> <p>14 Did I read that correctly?</p> <p>15 A You did.</p> <p>16 Q And that -- that's just describing what</p> <p>17 I -- what we discussed earlier about there are</p> <p>18 separate FOIA offices for each component, and</p> <p>19 they all process FOIA requests separately; is --</p> <p>20 A Correct.</p> <p>21 Q -- that right? Okay.</p> <p>22 But there are -- there are agency-wide</p> <p style="text-align: right;">Page 239</p>	<p>1 Chief FOIA Officer."</p> <p>2 Did I read that correctly?</p> <p>3 A You did.</p> <p>4 Q And -- and you've never spoken to</p> <p>5 Ms. Gupta?</p> <p>6 A No.</p> <p>7 Q Has she -- has she spoken to DEA about</p> <p>8 FOIA, like, outside of your presence to your</p> <p>9 knowledge?</p> <p>10 A No.</p> <p>11 Q Do you know if she's spoken to any of</p> <p>12 the components about FOIA?</p> <p>13 A I don't have any knowledge of that,</p> <p>14 unfortunately.</p> <p>15 Q Okay. And this document says that she</p> <p>16 is the Department of Justice's chief FOIA</p> <p>17 officer, correct?</p> <p>18 A Correct.</p> <p>19 Q And we went through the statute</p> <p>20 discussing the responsibilities of the chief FOIA</p> <p>21 officer, right?</p> <p>22 A Yes.</p> <p style="text-align: right;">Page 241</p>


<p>1 Q And that describes you as well as her, 2 correct?</p> <p>3 A Yes.</p> <p>4 Q And all of those responsibilities are 5 her responsibilities as well, right?</p> <p>6 A For the department, yes.</p> <p>7 Q And including the department's 8 compliance with -- with the FOIA statute; is --</p> <p>9 A Yes.</p> <p>10 Q -- that fair? Okay.</p> <p>11 And so -- and, you know, we don't need 12 to -- the first -- first line in the next 13 paragraph is, you know -- we see the training, 14 and we see 552(j), and we see, "A proper 15 understanding of the FOIA, including the correct 16 application of the statute's provisions, is the 17 first step towards any successful FOIA 18 operation."</p> <p>19 Did I read that sentence correctly?</p> <p>20 A Yes, you did.</p> <p>21 Q And that's the Department of Justice in 22 this document saying that a proper understanding</p> <p style="text-align: right;">Page 242</p>	<p>1 that the federal office responsible for 2 encouraging government-wide compliance with the 3 FOIA, so --</p> <p>4 A Yes.</p> <p>5 Q So what --</p> <p>6 A Okay.</p> <p>7 Q So what this is saying is that the 8 Department of Justice's Office of Information 9 Policy is setting policy for the entire 10 federal -- or is -- is encouraging government 11 compliance -- I don't want to misstate what this 12 is saying.</p> <p>13 A Yes.</p> <p>14 Q It's encouraging government compliance 15 with the Freedom of Information Act. That's -- 16 that's what OIP is doing, among other things?</p> <p>17 A Correct. But they set the regulations 18 for just the Department of Justice. Other 19 federal agencies have their own FOIA regulations, 20 if that makes sense.</p> <p>21 Q Right. And that does make sense, 22 but -- but the Office of Information Policy is</p> <p style="text-align: right;">Page 244</p>
<p>1 of the FOIA, including the correct application of 2 the statutes provision, is the first step towards 3 any successful FOIA operation?</p> <p>4 A Correct.</p> <p>5 Q Okay. And -- and -- and the federal 6 office that's responsible for encouraging 7 government-wide compliance with FOIA is OIP, 8 right?</p> <p>9 A Correct.</p> <p>10 Q And we discussed what OIP is earlier, 11 right?</p> <p>12 A Correct.</p> <p>13 Q OIP is one of the components of the 14 Department of Justice, right?</p> <p>15 A Yes.</p> <p>16 Q And OIP is responsible, according to 17 this, for the entire federal government's 18 compliance with FOIA, as far as supervising it, 19 right?</p> <p>20 A Correct. For the department, though, 21 for the Department of Justice.</p> <p>22 Q Well, no, this is saying that the --</p> <p style="text-align: right;">Page 243</p>	<p>1 ensuring compliance with, and we can all agree 2 that all government agencies are working off the 3 same statute?</p> <p>4 A Uh-huh.</p> <p>5 Q Different regulations, same statute, 6 right?</p> <p>7 A Correct.</p> <p>8 Q And the authority for the unusual 9 circumstances regulation is the statute?</p> <p>10 A The statute.</p> <p>11 Q Yeah. So I want to just go to page 6 12 quickly. And just for the record, I've found 13 this to be kind of very educational today, and 14 I've learned a lot and, frankly, gained some 15 appreciation for the work that the FOIA 16 department does.</p> <p>17 And my question -- I've highlighted 18 this with respect to ATF about sort of 19 stakeholder engagement, frequent FOIA litigants. 20 And I'm not going to read it, but, you know -- 21 and it says these efforts have improved 22 relationship with the requester community</p> <p style="text-align: right;">Page 245</p>

<p>1 overall.</p> <p>2 And are you aware of anything that</p> <p>3 either DO -- DOJ kind of writ large or DEA has --</p> <p>4 has done to try to engage the stakeholder</p> <p>5 community and to maybe improve relationships?</p> <p>6 A Yes. So I can speak for my office --</p> <p>7 and, again, we have a very small staff right now,</p> <p>8 but we have done a lot of work in engaging with</p> <p>9 requesters to talk about their request to try to</p> <p>10 work with them.</p> <p>11 Sometimes we're -- we actually will</p> <p>12 reach out just to have a conversation about the</p> <p>13 possibility of narrowing the scope, because we</p> <p>14 try to be as transparent as possible. We're very</p> <p>15 open, and we tell requesters we have -- you know,</p> <p>16 we're operating with a small staff. We have a</p> <p>17 very large backlog, but we'd like to move forward</p> <p>18 with your request. Would you consider maybe</p> <p>19 narrowing the scope or the topics? And then that</p> <p>20 will generally help us get the records out to the</p> <p>21 requester community quicker.</p> <p>22 So we've done a lot of work in the</p> <p style="text-align: right;">Page 246</p>	<p>1 of internal procedures."</p> <p>2 Let me just stop there. Well, let me</p> <p>3 keep -- keep going.</p> <p>4 "This included the updating templates</p> <p>5 and several DEA SOPs to assist FOIA staff carry</p> <p>6 out routine operations, such as processing</p> <p>7 certain types of record. In addition, the DEA</p> <p>8 Chief FOIA Officer, FOIA Unit Chiefs, and Office</p> <p>9 of Chief Counsel attorneys met to review and</p> <p>10 discuss complex records, which allowed the team</p> <p>11 to formulate plans of action to address difficult</p> <p>12 requests."</p> <p>13 My first question is: So -- so there's</p> <p>14 a self-assessment of the FOIA program. Is that</p> <p>15 like done in writing somewhere?</p> <p>16 A It is. There's actually a template</p> <p>17 that the Department of Justice OIP developed that</p> <p>18 we've used twice to evaluate, you know, all areas</p> <p>19 of the FOIA administration to see how we're</p> <p>20 doing. And we've used that document to actually</p> <p>21 create goals for the year and things that we'd</p> <p>22 like to improve or tighten up in our business</p> <p style="text-align: right;">Page 248</p>
<p>1 space. Particularly our intake unit is doing a</p> <p>2 lot of that outreach, as well as our unit chiefs.</p> <p>3 You know, we're picking up the phone. We're</p> <p>4 talking to requesters, seeing how we can work</p> <p>5 with them, seeing if we can negotiate on certain</p> <p>6 types of requests.</p> <p>7 Q Okay. And then looking at page 14</p> <p>8 here, go to -- it's right before the "Requester</p> <p>9 Services" and the "FOIA Public Liaison."</p> <p>10 A 14, page 14?</p> <p>11 Q Yeah.</p> <p>12 A Okay.</p> <p>13 Q Page 14. I mean, we see, "For</p> <p>14 instance" -- and this is the highlighted text, so</p> <p>15 this is the second sentence of the -- that</p> <p>16 paragraph.</p> <p>17 "For instance, the DEA's Chief FOIA</p> <p>18 officer" -- that's you?</p> <p>19 A Correct.</p> <p>20 Q -- "along with the FOIA Unit Chiefs,</p> <p>21 conducted a self-assessment of the FOIA Program</p> <p>22 and made several changes to increase efficiency</p> <p style="text-align: right;">Page 247</p>	<p>1 processes.</p> <p>2 Q Okay. And what are some of the</p> <p>3 improvements or the efficiencies that this</p> <p>4 paragraph is referring to that you implemented?</p> <p>5 A Sure. So one of the very first ones</p> <p>6 was completely restructuring the office to be</p> <p>7 successful, in my opinion. When I arrived in</p> <p>8 2017, I didn't feel like we were structured for</p> <p>9 success, so we changed that.</p> <p>10 The other thing that we changed is we</p> <p>11 created some new positions. We have what we call</p> <p>12 an expert government information specialist</p> <p>13 position now. That's a GS-14 position. I have</p> <p>14 four of them. They're all vacant right now. I'm</p> <p>15 trying to hire and fill that role, because I want</p> <p>16 to be able to delegate final signature authority.</p> <p>17 So we were doing that with one of the</p> <p>18 13s that we had. We were granting them final</p> <p>19 review and signature authority, again in an</p> <p>20 effort to really tackle our backlog issues.</p> <p>21 We've changed a lot of our templates,</p> <p>22 so we have many request letter templates for the</p> <p style="text-align: right;">Page 249</p>

<p>1 various types of requests that we handle. This</p> <p>2 is again --</p> <p>3 (Brief interruption.)</p> <p>4 We've done a lot of work to basically</p> <p>5 give our staff all the resources that they need</p> <p>6 to be effective and efficient in their job. So</p> <p>7 those are just some of the top ones.</p> <p>8 The other thing is appeals. We worked</p> <p>9 heavily to see what we could do to reduce appeal</p> <p>10 rate, and that effort's been going on since 2018.</p> <p>11 And so we've reduced -- basically, by changing</p> <p>12 internal process and procedures, have been able</p> <p>13 to reduce the number of appeals filed to the</p> <p>14 department by 67 percent in the last three years.</p> <p>15 MR. ZORN: Okay. I'm going to</p> <p>16 introduce my last exhibit, and then we'll be</p> <p>17 done. And this is Exhibit 7.</p> <p>18 (Deposition Exhibit Number 7</p> <p>19 was marked for identification.)</p> <p>20 THE WITNESS: I'm here.</p> <p>21 BY MR. ZORN</p> <p>22 Q And have you seen this Exhibit 7</p> <p style="text-align: right;">Page 250</p>	<p>1 talking about DEA now -- the DOJ FOIA staff done</p> <p>2 to promote the principles set forth in this memo?</p> <p>3 A So, again, I think it would be</p> <p>4 difficult for me to talk about what the</p> <p>5 department has done with regard to this memo. I</p> <p>6 can certainly articulate what we have done.</p> <p>7 The department shared this memo with</p> <p>8 us, and they have communicated with us on certain</p> <p>9 parts of this memo to make sure that we are doing</p> <p>10 certain things. But beyond that, I really can't</p> <p>11 articulate specifically what they've done on each</p> <p>12 aspect of this memo.</p> <p>13 Q Well, who at the department has worked</p> <p>14 with DEA on implementing the principles or</p> <p>15 guidelines in the memo?</p> <p>16 A We had -- his name is Patrick Austin.</p> <p>17 I communicated with earlier, maybe around May of</p> <p>18 2022, with regard to one aspect of this memo.</p> <p>19 And, in fact, I -- we implemented a</p> <p>20 change, and it has to do with (A)(4), the</p> <p>21 foreseeable harm standard. We made sure that all</p> <p>22 of our determination letters contained language</p> <p style="text-align: right;">Page 252</p>
<p>1 before?</p> <p>2 A I have.</p> <p>3 Q Do you know what Exhibit 7 is?</p> <p>4 A Yes.</p> <p>5 Q What is Exhibit 7?</p> <p>6 A This is a memo that was written by the</p> <p>7 attorney general, Merrick Garland, in early --</p> <p>8 early 2022 -- I think it was March -- that talks</p> <p>9 about the Freedom of Information Act and</p> <p>10 expectations of federal agencies in complying</p> <p>11 with the act.</p> <p>12 Q And is it fair to describe this as a</p> <p>13 Department of Justice priority?</p> <p>14 A Yes.</p> <p>15 Q And since March 2022 -- well, do you</p> <p>16 know what Sunshine Week is?</p> <p>17 A Yes.</p> <p>18 Q And this came out during 2022, Sunshine</p> <p>19 Week, right?</p> <p>20 A It did.</p> <p>21 Q And since the publication of this memo,</p> <p>22 what -- what has the DOJ FOIA staff -- I'm not</p> <p style="text-align: right;">Page 251</p>	<p>1 that basically told the requester that we</p> <p>2 consider the foreseeable harm standard when</p> <p>3 reviewing records and applying exemptions. That</p> <p>4 language was not necessarily in the letter in</p> <p>5 this manner previously, so we adjust -- we made</p> <p>6 that adjustment.</p> <p>7 Q And -- and -- okay. So that was --</p> <p>8 that was getting to my next question, which was:</p> <p>9 What has the DEA done to -- has DEA done anything</p> <p>10 since March 2022, specifically in light of</p> <p>11 this -- this memo, to update --</p> <p>12 A Yes.</p> <p>13 Q -- its processes or determinations or</p> <p>14 whatnot?</p> <p>15 A Yes. So beyond (A)(4), with regard to</p> <p>16 removing barriers to access and reducing FOIA</p> <p>17 request backlogs, C, we are doing a lot of work</p> <p>18 in the space to try to figure out how we are</p> <p>19 going to aggressively tackle our backlog going</p> <p>20 forward. We have a growing backlog. Again, it's</p> <p>21 due to staff shortages. I am delegating</p> <p>22 signature authority on certain types of cases</p> <p style="text-align: right;">Page 253</p>

<p>1 right now to two GS-13s that are helping us move 2 certain cases forward.</p> <p>3 I've also made a change -- it's here 4 on -- it has to do with -- one of the points in 5 here talks about making records more accessible 6 to first-party requesters. So, for example -- 7 and I made a change this year.</p> <p>8 Looking for ways that we would release 9 material outside of the FOIA, that is very 10 difficult for DEA because the vast majority of 11 our records are highly sensitive, right, but 12 there is a type of record that I felt fell into 13 this category, and that has to do with former 14 agents or task force officers that request access 15 to their training records for the time that they 16 worked at DEA. I felt that that should not be 17 FOIA function. It's going to get caught, likely, 18 in our backlog. We've got to find a way to 19 release that quicker.</p> <p>20 So I had a conversation with the Office 21 of Training, and we are now allowing them to make 22 those releases. So that is being handled outside</p> <p style="text-align: right;">Page 254</p>	<p>1 earlier with Mr. Zorn about -- about fees?</p> <p>2 A Yes, I do.</p> <p>3 Q And in particular when the DEA 4 estimates the amount of fees that are owed and 5 that the requester has to pay prior to the DEA 6 processing the request?</p> <p>7 A Yes.</p> <p>8 Q Does the requester -- if they disagree 9 with the DEA's estimate, do they have an 10 opportunity to appeal that?</p> <p>11 A They do.</p> <p>12 Q And as part of that appeal, can they 13 also challenge their categorization as, say, a 14 commercial requester?</p> <p>15 A They can.</p> <p>16 MR. RODRIGUEZ: For the record, the 17 witness would like an opportunity to review and 18 sign the transcript. And I have no further 19 questions.</p> <p>20 MR. ZORN: I have no -- no further, 21 either.</p> <p>22 VIDEO TECHNICIAN: We are off the</p> <p style="text-align: right;">Page 256</p>
<p>1 the FOIA process, and that is one of the bullets 2 here. I can point out the number if you'd like.</p> <p>3 Q And I'm just kind of musing on the 4 record here, but what about -- making the 5 administrative proceeding -- proceeding records 6 available on some sort of online platform would 7 probably take -- take some of the weight off your 8 shoulders as well, right?</p> <p>9 A I mean, that is certainly a 10 conversation I'd be willing to entertain with the 11 administrative law judge office. As of right 12 now, the only information that is publicly 13 available, like I said, is their final decisions 14 and orders online. That's all on DEA.gov, but 15 that is something that we could take into 16 consideration.</p> <p>17 MR. ZORN: I'm going to pass the 18 witness. I have no further questions.</p> <p>19 MR. RODRIGUEZ: I just have a very few.</p> <p>20 EXAMINATION BY COUNSEL FOR DEFENDANTS 21 BY MR. RODRIGUEZ 22 Q Ms. Miller, do you remember talking</p> <p style="text-align: right;">Page 255</p>	<p>1 record at 15:49 p.m. This concludes today's 2 testimony of Kelleigh Miller. The total number 3 of media units used was eight and will be 4 retained by Veritext.</p> <p>5 (Whereupon, at 3:49 p.m., the 6 deposition of KELLEIGH MILLER 7 was concluded.)</p> <p>8</p> <p>9 * * * * *</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 257</p>



<p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, ERICK M. THACKER, the officer before whom</p> <p>3 the foregoing deposition was taken, do hereby</p> <p>4 certify that the witness whose testimony appears</p> <p>5 in the foregoing deposition was duly sworn by me;</p> <p>6 that the testimony of said witness was taken by</p> <p>7 me in stenotype and thereafter reduced to</p> <p>8 typewriting under my direction; that said</p> <p>9 deposition is a true record of the testimony</p> <p>10 given by said witness; that I am neither counsel</p> <p>11 for, related to, nor employed by any of the</p> <p>12 parties to the action in which this deposition</p> <p>13 was taken; and, further, that I am not a relative</p> <p>14 or employee of any counsel or attorney employed</p> <p>15 by the parties hereto, nor financially or</p> <p>16 otherwise interested in the outcome of this</p> <p>17 action.</p> <p style="text-align: center;"></p> <p style="text-align: center;">18 ERICK M. THACKER</p> <p style="text-align: center;">19 Notary Public in and for the</p> <p style="text-align: center;">20 District of Columbia</p> <p>21 My commission expires:</p> <p>22 June 30, 2024</p> <p style="text-align: right;">Page 258</p>	<p>1 jimmy.rodriguez2@usdoj.gov</p> <p>2 January 19, 2023</p> <p>3 RE: AIMS Institute, PLLC, Et Al. v. Garland, Merrick, Et Al.</p> <p>4 DEPOSITION OF: Kelleigh Miller 5645328</p> <p>5 The above-referenced witness transcript is</p> <p>6 available for read and sign.</p> <p>7 Within the applicable timeframe, the witness</p> <p>8 should read the testimony to verify its accuracy. If</p> <p>9 there are any changes, the witness should note those</p> <p>10 on the attached Errata Sheet.</p> <p>11 The witness should sign and notarize the</p> <p>12 attached Errata pages and return to Veritext at</p> <p>13 errata-tx@veritext.com.</p> <p>14 According to applicable rules or agreements, if</p> <p>15 the witness fails to do so within the time allotted,</p> <p>16 a certified copy of the transcript may be used as if</p> <p>17 signed.</p> <p>18 Yours,</p> <p>19 Veritext Legal Solutions</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 260</p>
<p>1 AIMS Institute, PLLC, Et Al. v. Garland, Merrick, Et Al.</p> <p>2 Kelleigh Miller 5645328</p> <p>3 ACKNOWLEDGEMENT OF DEPONENT</p> <p>4 I, Kelleigh Miller, do hereby declare that I</p> <p>5 have read the foregoing transcript, I have made any</p> <p>6 corrections, additions, or changes I deemed necessary as</p> <p>7 noted above to be appended hereto, and that the same is</p> <p>8 a true, correct and complete transcript of the testimony</p> <p>9 given by me.</p> <p>10</p> <p>11 _____</p> <p>12 Kelleigh Miller Date</p> <p>13 *If notary is required</p> <p>14 SUBSCRIBED AND SWORN TO BEFORE ME THIS</p> <p>15 _____ DAY OF _____, 20____.</p> <p>16</p> <p>17 _____</p> <p>18</p> <p>19 NOTARY PUBLIC</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 259</p>	<p>1 AIMS Institute, PLLC, et al. vs. Merrick Garland,</p> <p>2 et al.</p> <p>3 Kelleigh Miller (#5645328)</p> <p>4 E R R A T A S H E E T</p> <p>5 PAGE _____ LINE _____ CHANGE _____</p> <p>6 _____</p> <p>7 REASON _____</p> <p>8 PAGE _____ LINE _____ CHANGE _____</p> <p>9 _____</p> <p>10 REASON _____</p> <p>11 PAGE _____ LINE _____ CHANGE _____</p> <p>12 _____</p> <p>13 REASON _____</p> <p>14 PAGE _____ LINE _____ CHANGE _____</p> <p>15 _____</p> <p>16 REASON _____</p> <p>17 PAGE _____ LINE _____ CHANGE _____</p> <p>18 _____</p> <p>19 REASON _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 KELLEIGH MILLER Date</p> <p style="text-align: right;">Page 261</p>

<div>1 RE: COST CERTIFICATE</div> <div>2 DEPOSITION OF: Kelleigh Miller</div> <div>3 5645328</div> <div>4 1/5/2023</div> <div>5 Cause No:</div> <div>6 AIMS Institute, PLLC, Et Al. v. Garland, Merrick, Et Al.</div> <div>7 Enclosed for filing, please find the</div> <div>8 required certification pages and witness</div> <div>9 signature pages for the deposition referenced</div> <div>10 above was/was not returned.</div> <div>11 Please note that \$_____ is the</div> <div>12 deposition officer's charges to the</div> <div>13 _____for preparing the original</div> <div>14 deposition and any copies of exhibits.</div> <div>15 Thank you for your prompt attention to this</div> <div>16 matter.</div> <div>17</div> <div>18 Sincerely,</div> <div>Veritext Legal Solutions</div> <div>19 Firm Registration No. 571</div> <div>300 Throckmorton Street, Suite 1600</div> <div>20 Fort Worth, Texas 76102</div> <div>cs-tx@veritext.com</div> <div>21</div> <div>22</div>	

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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